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Floor Debate
May 19, 2009

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SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this day of the One Hundred First Legislature, First Session. Our chaplain for today is evangelist Sharon Anderson Towery of Sharon Adele Ministries from Lincoln, Nebraska, a guest of Senator Council. Please rise. []

EVANGELIST ANDERSON TOWERY: (Prayer offered.) []

SENATOR CARLSON: Thank you. I call to order the eighty-first day of the One Hundred First Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record. []

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

SENATOR CARLSON: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR CARLSON: Are there any messages, reports, or announcements? []

CLERK: Mr. President, a communication from the Governor to the Clerk. (Read re: LB311, LB312, LB314, LB318, LB628, and LB629.) Hearing notice from Government, Military and Veterans Affairs, confirmation hearing. That's all that I have, Mr. President. (Legislative Journal pages 1597-1598.) [LB311 LB312 LB314 LB318 LB628 LB629]

SENATOR CARLSON: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk. []

CLERK: Mr. President, LB36, a bill originally introduced by Senator Flood relating to the death penalty, discussed yesterday. Committee amendments were adopted. The first amendment I have this morning, Mr. President, is by Senator Council, AM1452. (Legislative Journal page 1596.) [LB36]

SENATOR CARLSON: Senator Council, you are recognized to open on your amendment. [LB36]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I rise this morning to

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introduce AM1452 in hopes that this body will adopt this amendment, and before I proceed to the substance of the amendment I believe that it is necessary for me to address the procedure surrounding this amendment, because I am sure that there are members of this body who are poised to raise questions as to the appropriateness of this amendment, because it is no surprise that AM1452 is, in essence, LB306, which was the bill that I introduced to repeal the death penalty, and allow me to place this amendment in a procedural context. This bill was introduced, there was a hearing held by the Judiciary Committee on January 29 of this year. At that same time the Judiciary Committee held a hearing on LB36. Both of those measures had a full and fair hearing and, in fact, if you were to look at the committee statement with regard to both of these measures, you will find that many of the people who testified in opposition to LB36 testified in opposition because of their firm belief that the state should not have a death penalty and, in fact, many of those same people testified in support of LB306, which is AM1452. After the hearing on that matter the committee considered the many objections, questions, and concerns that were raised during that hearing not with respect to what is now AM1452 but the questions, concerns, and issues surrounding LB36. And it was the decision of the committee that time needed to be taken to allow for an opportunity for those questions, issues, and concerns with respect to LB36 to be addressed and it was the consensus of the group to permit that to happen. And for that reason, both LB36 and LB306 were held by the committee for purposes of providing an opportunity, a real opportunity, to see whether the problems that were identified with LB36 could be addressed. As Senator Lathrop so eloquently and aptly stated during the debate yesterday, that effort was undertaken in large measure by our committee Chair, Senator Ashford, and Senator Lathrop, working with the various stakeholders on this issue to see if they could address some of the problems with LB36. Now I must add at this point that I maintained from the beginning of that process that LB36 could not be fixed; that if we were talking about trying to eliminate the arbitrariness, the capriciousness, and the discriminatory aspects of the death penalty, that that was going to be a futile effort. But nevertheless, working with the committee, I agreed that that effort should be undertaken and the understanding among the committee members was that LB306, which is now AM1452, would not be advanced to this floor until such time as LB36 was advanced to the floor. Because it was the consensus, I believe that I can represent, from the beginning of the committee's deliberation of these two measures that they both warranted debate by this body. Now some will question, well, Senator Council, you had an opportunity to designate LB306 as your priority. You're absolutely correct. Again, deferring to the committee, upon the committee's representation that whenever LB36 was acted upon by the committee--and it was clear from the beginning that LB36 was going to be advanced to this floor for debate whether or not all of the problems could be addressed or not--it was made clear to me that LB36 was going to be advanced to the floor. And in fact, shortly before the deadline for designating a priority, I asked the committee Chair about the process, because I had a decision to make whether to designate LB306 as my priority. The representation made to me was that if LB36 is advanced to the floor, LB306 would be advanced to the floor. Now we all

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know if LB306 was not designated as my priority and advanced to the floor the likelihood of it being heard during this session was slim to none. So it is no surprise to any member of the committee. I was open, honest, and forthright throughout this process that if LB36 is advanced to the floor that an amendment in the form of LB306 would be offered. Now if you look at the committee statement, LB306 (sic) was advanced to the floor on the same vote that LB306 was advanced to the floor: 6 in favor, 1 opposed, 1 present, not voting. So both of these bills were advanced to this body for debate with the understanding that because we were talking about providing a means of implementing the death penalty that we needed to have an opportunity to discuss the validity and the value of the death penalty. So with that understanding and with that consensus, I believe it's fair for me to represent of the thinking of the committee that LB306 is being offered in the form of AM1452. I don't think there can be any question as to the germaneness of AM1452 to this bill. It was stated numerous times yesterday that we have a death penalty but we don't have a means of implementing it. Certainly as a part of that process the question should be do we need to develop a means of implementing the death penalty, and inherent in that is do we need a death penalty. And for those reasons, AM1452 is, in my opinion, without a doubt, an appropriate measure to be debated and considered by this body as it deliberates LB36. Now allow me to get to the substance of AM1452. Although it's long in length, it's short in purpose, and the purpose of AM1452 is simply to repeal the death penalty in the state of Nebraska. All of the sections of our current statute that would be affected by such a repeal are reflected in AM1452 and you could go through all of the sections of AM1452 and you will come to the understanding and conclusion that it simply is designed to repeal the death penalty. And why should we repeal the death penalty? Well, we've discussed several of the reasons why we should repeal the death penalty during the debate yesterday, but allow me to address a couple of the concerns and reasons for our need to repeal the death penalty. I think that there is no question that the death penalty in this state serves one purpose and that is to sanction revenge. We have heard yesterday during the debate about the worst of the worst and that that's the intent. We've heard about safety of the citizens of the state of Nebraska. [LB36 LB306]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: And let me preface all of my comments by saying that a repeal of the death penalty by no means ignores the rights, the concerns, the feelings of the victims of these horrible crimes, and in no way affects the safety of the citizens of the state of Nebraska because it substitutes life without possibility of parole for those individuals. And as time permits, I will discuss and address each of the other reasons why the death penalty in this state is broken, should not be fixed, and should simply be repealed. There should be no doubt in the minds of those who particularly have indicated that they are those who believe in the sanctity of life from the womb to natural death. LB36 does not provide for a natural death. And I certainly understand that the

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victims of these crimes... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR COUNCIL: ...did not suffer a natural death. [LB36]

SENATOR CARLSON: Thank you, Senator Council. We now have the floor open for debate. Senators wishing to speak: Flood, White, Nantkes, Rogert, Friend, Fulton, and others. (Doctor of the day introduced.) Speaker Flood, you're recognized. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. I knew Senator Council was going to file this amendment. As she stated in her opening on AM1452, this is where she has been and where she remains and I respect that. We have a difference of opinion on this issue. She has a very strongly held belief, I have a very strongly held belief, and there's nothing wrong with that. I respect her position. I have every reason to believe it's always been her position. She was very good at the hearing, asking very important questions and she did her homework at the hearing and brought forward a number of witnesses and those to testify that did a very nice job. I don't agree with her. I don't support AM1452. I don't think it's the right direction for Nebraska. In the amendment that's before you, paragraph (4), page 1, line 18, it says, "The Legislature remains troubled by the lack of any meaningful procedure in the courts to ensure uniform application of the death penalty throughout the state despite the Legislature's express finding in 1978 of a radical lack of uniformity." I disagree with that. We have super due process in Nebraska. People on death row didn't get there by simply getting convicted in the trial court and sending them down to the prison, awaiting execution. I want to remind you, there are a number of steps that we go through that I believe is very meaningful in terms of the due process considerations afforded to the defendant. Now, after Ring v. Arizona, LB1 in 2002, the prosecutor has to, in the complaint, list the information and identify the information by which the prosecutor is seeking to convict the defendant of an aggravating circumstance. That's not a surprise. It's there in the complaint when it's file in the district court. The district court holds a trial. A jury of 12 people sit there with alternates and they listen to the horrific testimony. The jury goes back, decides whether or not the defendant is guilty or not guilty, and then it goes to the aggravators phase of this process, where the state of Nebraska, through the county attorney or the Attorney General, has to prove by reasonable doubt...proof beyond a reasonable doubt that the defendant committed an act that meets the criteria of one of the aggravators. And the Nebraska Supreme Court, if you look at all the case law, has been very good about identifying exactly what circumstances in Nebraska meet the criteria for that especially heinous act for one of the aggravators. Obviously, multiple killings, killing a police officer, killing another inmate or killing a corrections official, that's all in there. After that determination is made by a jury, which I think is meaningful and complies with the Ring v. Arizona case in 2002, following LB1 in the same year, then it goes to a three-judge panel. The three-judge panel listens to the mitigating evidence

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presented by the defense counsel, which there is hardly a burden for. You present the evidence, it's all accepted into the record and the court hears exactly the reasons why the defendant deserves to be spared from the death penalty. Also with that phase, the court, the trial, the three-judge panel that has to vote unanimously to sentence a defendant to death, hears evidence at that time, not only the mitigating evidence but they have to conduct a proportionality review. And when Senator Lathrop and I were going back on this, back and forth on this, the Supreme Court in Nebraska has said you can't expect the trial court to take in, you know, under its...on its own evidence all of the information for every death case in Nebraska, for every nondeath penalty case first-degree murder in Nebraska. You have to look at the crime. You have to read, you know, obviously, the law, the case law. You have to receive into evidence the information provided to you by... [LB36]

SENATOR CARLSON: One minute. [LB36]

SPEAKER FLOOD: ...by the defense counsel. And then, if the three-judge panel decides that we have a situation where the defendant deserves death, it goes up to the Supreme Court for an automatic review, which is a significant step. No appeal has to be even filed at that point because it's automatically going to get revealed. Obviously, there are appeals that are filed. So I, just to start here, I oppose AM1452. I respect Senator Council's position but we differ on this. This goes exactly the opposite direction. I think we should go as a state and I don't have...I have a problem looking those jurors in the face that sat through this and telling them they weren't part of a meaningful process. And that's exactly what her bill suggests, is that there was no meaningful process. And I'm looking at page 1, line 18, paragraph (4) that ends on line 21, and that's where I'm at on this and I hope to speak again on it. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Speaker Flood. Senator White, you're recognized. [LB36]

SENATOR WHITE: Thank you, Mr. President. I yield my time to Senator Nantkes. [LB36]

SENATOR CARLSON: Senator Nantkes, 4 minutes and 50 seconds. [LB36]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator White. Members, I rise in full support of Senator Council's amendment and again in opposition to LB36. Yesterday we spent a great deal of time talking about some policy, public policy and philosophical issues engaged and inherent in the debate on this issue, but I also want to take time to make the record today in regards to specific technical and legal issues surrounding imperfections and flaws in LB36, which behooves us to support AM1452. These issues all...not all but some relate to postconviction relief but, nonetheless, need to be talked about because they are modified by LB36 and that's entirely relevant.

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Reading from the bill itself as contemplated by the original committee amendment, page 2, there's a discussion about convicted persons who shall appear to be incompetent: The director of Corrections shall give notice to the district court judge who sentenced, and such judge shall investigate whether or not the commission should be put together to examine the convicted person's competency. Questions: What criteria will the director of Corrections utilize to make this determination? Where will these factors be published? How often will the inquiry be made? What prompts the inquiry? Is the director of Corrections trained and capable of making this determination? Can this process be triggered by other state employees within the Department of Corrections or otherwise? Can this be triggered by other inmates, guards, medical staff, clergy, the inmate himself? Can the convicted person or persons trigger this review? What are the criteria then in this section for the judge to conduct this investigation related to competency? Is there a time line for such decision? If so, what is it? What appeal rights are available to a convicted person if they disagree with the decision of the commission? What evidentiary proof can be proffered? Who can enlist...who can enlist independent expert opinions to make this investigation or to counteract it? Who pays for such? Page 2, line 23, at issue: three licensed mental health professionals employed by the state shall conduct the competency hearing. Well, that prompts additional questions. What type of mental health professionals? No language in the statutes limits this to qualified psychologists or psychiatrists. Under the language, as stated in LB36, would an LDAC, a licensed drug and alcohol counselor, qualify? Is that appropriate? Would they lack training and expertise to make this determination? Additionally, this section strikes "mental" from the qualification of competency, so does that anticipate or contemplate a broader investigation into physical competency to undergo lethal injection? On page 3, line 3, another issue is brought forward: the three-member panel has ten days to issue their report and findings on competency. Why ten days? Is this sufficient time to conduct a thorough investigation? Page 3, line 6: requires only two out of three members of the commission agree to the decision regarding competency. Why not a unanimous decision be required? If found incompetent, it also requires an annual...if the convicted is found incompetent it prompts an annual review. Why a one-year annual review? Why not a more or less frequent review? Must future reviews be conducted by the same three state employees on the original commission? None of that is spelled out in the bill. If not, how and when will substitute members of the competency commission be selected? Page 3 through 4, new language regarding the standard for determining competency under this section says... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NANTKES: ...that it is the same as the standard for determining competency to stand trial. Are the identified state employees contemplated in this new standard trained on factors considered for determining competency to stand trial? Isn't that determination left to the judge as fact finder? Why would it be delegated to the commission here? Is that an acceptable and appropriate delegation of powers and

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authority? Again, isn't the accused at the trial level offered up...offered the opportunity to present individual evaluations to the fact finder, so why not at this preexecution stage, if utilizing the same standard as utilized pretrial? Page 4 through 5: costs incurred by the commission will be entered in district court record and paid for by the county. Can the counties afford this? Were they consulted about this provision? Who actually makes the record, the commission members, the judge? Can a minority report be filed if one member dissents? Again, nowhere in legislation is... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR NANTKES: ...this spelled out. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Senator Nantkes, you're on your light now. You may continue. [LB36]

SENATOR NANTKES: Thank you, Mr. President. Again, in continuation, colleagues, pages 4 through 5 of LB36, again, where are the rights and procedures surrounding appeal delineated in regards to this competency determination? If they are not set forth in the legislation, isn't that tantamount to a due process violation--no notice, no opportunity to be heard? Issue surrounding potential inconsistency: on page 2 the bill selects any judge at the district court level of the judicial district where the accused was tried and sentenced can preside over these postconviction competency issues. Makes sense because what if the original judge was deceased, retired or unavailable? However, on page 5, line 13, in that section it provides special procedures to execute female convicts who may be pregnant and requires the judge, the original district court judge from that sentencing be utilized. So what if that original judge is later deceased, retired or unavailable? How will that work? Page 5, another issue: How does someone appear to be pregnant? Does the Department of Corrections monitor menstrual cycles, weight, hormone levels? That's not spelled out in the bill. Ultimately, in relation to Sections 4 through 5 on page 5 and 6, it declares pregnancy equivalent to an incompetency, or at least in this context. Will that policy apply elsewhere in our laws? Issue on page 5, Section 5, related to pregnancy determined not by medical professionals or licensed medical professionals but, rather, the same three state employees who are simply licensed mental health professionals: Do they have the proper training and expertise to make this determination? Nowhere is that listed in the original bill. Page 5 through 6, issue surrounding potential pregnancy of convicted are ultimately paid for by the county rather than the Department of Corrections: Were the counties consulted and notified and agreed to this? Page 6, issue contemplates the escape of a death row inmate: Agree that we should be concerned about the situation if somebody were to escape from Nebraska's death row, albeit that has not happened, but it prompts the question further that once the escapee is returned to custody, according to the language of the bill, within the Department of Corrections, an execution must then take place within 60 days. So does that anticipate the state would not prosecute or try

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additional and separate criminal offenses related to the escape? It must not because there's no way that full trial and fair trial could be completed within 60 days. Sixty days is an arbitrary number. Page 7, issue, after the death sentence is affirmed by the Nebraska Supreme Court on mandatory direct view, the Supreme Court shall issue a death warrant establishing the date for enforcement. However, a question is presented. No time table exists in this section. Most other sections of this bill utilize an arbitrary 60-day time frame. What's the difference here? How is the convicted and counsel expected to have adequate notice and opportunity to be heard on issues surrounding this topic? Again, possible due process violation. Lines 23 through 24, continuing on page 7, the execution must be carried out 60 days from issuance of the warrant. Is that sufficient time to allow any substantive or technical challenge to be made regarding the death warrants itself or the process surrounding the issuance of that warrant? If not, again, potential due process violation. Some questions exist surrounding vagueness issues and the process laid out. On page 7 through 8, regarding the expiration of an original death warrant because of a stay or otherwise, what if the original warrant was unable to be carried out by the state because they weren't ready to proceed because they couldn't put in place the protocols or procedures to enact LB36,... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NANTKES: ...they couldn't gather the lethal substances in time contemplated by LB36, or a variety of other concerns? Then what happens if the state can't meet that timetable? Issue, page 8, lines 9 through 19, if conviction is reversed the only remedial provision available is to return the convicted to the county sheriff in the county where tried to await further judgment. What further actions or judgments are contemplated by this section? If a conviction is reversed on a technical issue, what about public safety? Shouldn't we have a provision to default to life in prison without the possibility of parole? Page 8 and 9 sets forth protocol for lethal injection and identities relating to the substance or substances to be used. Vagueness problems persist. This is arbitrary and capricious. Challenges will come in regards to this protocol made by the Department of Corrections. Why does this not include such protocols to be... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR NANTKES: Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Nantkes. Senator Rogert, you're recognized. [LB36]

SENATOR ROBERT: Thank you, Mr. President. Members, I rise to support Senator Council's amendment. I also rose yesterday to support LB36 and I said why, because I believe that the only way to fix the problems with the administration of the death penalty is to repeal it. Mr. President, would Senator Ashford yield to a question, please? [LB36]

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SENATOR CARLSON: Senator Ashford, would you yield? [LB36]

SENATOR ASHFORD: Yes. [LB36]

SENATOR ROBERT: Senator Ashford, probably other than Senator Dierks, you've had this discussion more than any of us here in this body over the past 20 years. Would you care to comment a little bit on Senator Council's opening remarks to her amendment? [LB36]

SENATOR ASHFORD: First of all, thank you, Senator Rogert, for the question. And I agree that...with Senator Council's reflection upon the committee's deliberations. There is a bill on General File dealing with...repeal the death penalty that would not...it's not prioritized, it would not come up this year, it would come up next year theoretically. But quite frankly, in listening to the debate yesterday, I think it's just as well that we have this debate on repeal today and it certainly was positioned that way. The discussion yesterday really went more to the issue of the death penalty itself than to lethal injection. We had very little discussion about the lethal injection penalty. So, yes, I think Senator Council has accurately reflected the committee's desire to have these issues out in front of the body and then so it is an accurate reflection of the committee's work. [LB36]

SENATOR ROBERT: Thank you, Senator Ashford. Mr. President, I yield the rest of my time to Senator Nantkes. [LB36]

SENATOR CARLSON: Senator Nantkes, 3 minutes and 15 seconds. [LB36]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator Rogert. Again, colleagues, a continuation of flaws that do exist within LB36 and that are not addressed or rehabilitated through the committee amendment. Issues regarding protocol on pages 8 and 9, this does not cure protocol issues, neither does the committee amendment, in regards to the process. What is it governed by? It specifically struck a section that said it's not applicable...that it was not specifically exempt from the APA, but nothing in the bill or the committee amendment says that the protocol system is specifically governed by the Administrative Procedure Acts. What about public comment? What about public view of these issues? Page 10, section (3), issue: only requires one substance to render the convicted unconscious, doesn't even require a lethal dosage, this is the language of the bill, or any other subsequent substances to be utilized. Page 10, the protocols require training of the execution team. Who is going to be on the execution team? How will they be trained? How will they be qualified? What happens if developed protocols are not follows? Page 11, issues arise surrounding if the participation by medical professionals in execution is not subject to scrutiny under medical licensing or ethical codes, why do we need affirmative defenses and exclusionary language afforded to such professionals in line 1 through 6 and lines 16 through 20? Page 11, lines 7 through

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11, says no prescription is necessary for the designated substances even though precisely in the bill it said substances or substances previously. Okay. But if we don't have a dispensing pharmacist, how can we directly get this substance from the pharmaceutical company? Those protocols are not defined and prompt concern about procedure. Nowhere else do we allow the state to receive pharmaceuticals directly from the pharmaceutical company, directly from the supplier. Pharmaceutical companies are highly regulated by both state and federal law. Nowhere does it say that they should be able to otherwise directly dispense... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NANTKES: ...to the state or to the director of Corrections. Additionally, section (3) on page 11 exempt such from provisions of the Uniformed Controlled Substances Act, but that section references no other federal or state regulation governing pharmaceutical companies or its products. That poses problems. Page 11, section (4): Can the state rightly supersede or abrogate issues surrounding professional licensure and disciplinary action by such authorities after having previously in law made delegation for such actions and such bodies to carry out their work? Section 12, the director can designate any person qualified under the terms of the protocol to administer the substances. That contemplates that even security personnel in the room could administer these substances. Thus, we don't have any clear indication from these protocols. Mr. President, I'm going to conclude in regards to specific technical problems with LB36 and... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR NANTKES: ...hope to engage later on some additional questions surrounding protocol. Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Nantkes, Senator Ashford, and Senator Rogert. Senator Friend, you're recognized. [LB36]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Senator Council brought up the idea of appropriateness of this amendment. I think we've all learned by now, at least I have learned it a long time ago and I think you have, too, is you get enough votes in this Legislature, you can do anything you want. Whether it's appropriate or inappropriate, you can do anything you want relating to public policy. This bill was advanced by this committee. The subject matter is similar. It's germane. We've heard this subject matter the last three years but so what? We hear other stuff every year. It had a hearing. It's ready for debate. So my answer to the question of appropriate or inappropriate is, yeah, I would say it's appropriate so I think we have the debate. But remember, you get the votes. It's not my personality. It's not anybody else's, Senator Flood's, Senator Harms's. It's the bill. It's what the bill does. It's going out and getting

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the votes. Let's have the debate. Mr. President, I'd like to yield the rest of my time to Senator Flood. [LB36]

SENATOR CARLSON: Senator Flood, 3 minutes and 20 seconds. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Thank you, Senator Friend. Senator Nantkes presented her concerns regarding the green copy of LB36 as presumably amended by AM828. I want to just give you a little background. The standards in here for competency were changed to be uniform with the same standards used by courts to determine whether someone is competent enough to stand trial. Just to repeat that, these are the same standards to determine the competency to be executed as we currently have in our law to determine the competency to stand trial. I think that's appropriate. I think that's an appropriate change. Experts are familiar with the standard. Courts have invested a lot of time and have written a lot of opinions developing that standard. And lawyers, practitioners are familiar with the standard for the competency to stand trial. So that language did need to be updated and that's why it's there. Senator Nantkes talked about executing pregnant people, pregnant women. That was in the statute before I ever introduced LB36. It was modified to say convicted person as opposed to some of the other words. I mean, changes were made to update the language but that has clearly been the intent of this State Legislature for a very long time. We don't execute pregnant women. As far as the death warrant is concerned, there's this question about the arbitrary and capriciousness of 60 days. Let's all remember back to, I believe it was, 2007 when Carey Dean Moore was set to be executed I believe in the first part of May. The Supreme Court had signed a death warrant which orders that the execution take place within 60 days. And then, on their own motion, they withdrew it. No one even filed anything. In all honesty, I have to give credit to Senator Chambers. He raised the issues about the execution protocols as they relate to electrocution. But on their own motion, they withdrew it. The Supreme Court can withdraw a death warrant just like it can issue one. So if you're concerned about the rights of the defendant... [LB36]

SENATOR CARLSON: One minute. [LB36]

SPEAKER FLOOD: ...being compromised, I don't think that's a consideration here. Because our Supreme Court has already done something very prominently in...before an execution to withdraw a death warrant on their own motion. And I think our Supreme Court has a record of stepping in and I think if you read their opinions, you know this is the biggest issue that they deal with on our court and they take it very seriously. You talk about...some in here talk about the procedures being vague. These are the same procedures that are outlined in the Kentucky law that the U.S. Supreme Court said was appropriate because the Department of Corrections is going to develop a protocol and it will be tested. It will be tested by the courts. It may well be tested by the Legislature under the act we have. It will be tested through the Administrative Procedures Act. It will

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be tested by the defendants, those convicted killers currently on death row. So it will have a proper airing. [LB36]

SENATOR CARLSON: Time. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Speaker Flood and Senator Friend. Senator Fulton, you're recognized. [LB36]

SENATOR FULTON: Thank you, Mr. President, members of the body. I rise in opposition to AM1452 and I'm going to explain why in a little bit different way than what I have explained in the past. The first thing I want to touch on, though, is the appropriateness of Senator Council's bill being brought forward in the form of an amendment. And I'm just...I'm going to say it is what it is, and I do believe it's appropriate for her to bring it out. Now in the past, when there have been amendments that have been...or bills that have been brought out in the form of an amendment, my apprehension has always been not having adequate time to reflect and study on the subject matter and the principles behind the amendments. Okay? I can't...I can't argue that on AM1452. I don't think any of us can argue that on this amendment. This is something that all of us have thought about and probably have arrived at positions on. So as to whether or not it's appropriate, Senator Council, I think it's appropriate and I'm glad that we're able to debate this, because I think this is what we were debating anyway yesterday. Senator White yesterday articulated a position that I had articulated in the Legislature prior and that is why I believe we should not repeal the death penalty. Now I presented this a couple years back. I'm going to present it in a little bit different way, though the principles remain the same. I'll ask you, could we here in the Legislature, with 25 votes, could we pass a law disallowing a law enforcement officer from employing deadly force? Could we make a law saying that an officer of the law in the state of Nebraska can never employ the use of deadly force? We couldn't make such a law because it militates, it counters, against a fundamental precept. How about this? Could we pass a law disallowing our National Guard from engaging in combat where they might be forced to take the life of another man? Could we pass a law to say that for our National Guard within Nebraska? Again, we could not because it comes back to a principle which would be militated against. That principle which has been expressed as far...I haven't studied that far back but I've read some philosophers. There's a pagan philosopher, Aristotle, who talked about the first...the precepts of the natural law, what we can derive by the light of human...the light of human reason alone. Human beings tend toward self-preservation instinctually as well as intellectually. If you put your hand on a hot stove, it is reflexive that you pull back because human beings have a tendency toward self-preservation. If someone is trying to take the life of...your life or the life of an innocent, there is a compulsion, a sense of justice, a sense of preservation for one's life that causes one to defend himself, to defend the innocents.

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These are principles by which we derive such things as just war theory, principles of self-defense, and indeed the death penalty. Now with regard to the death penalty, it's not...there are other principles at work within the death penalty. Some people hold that we can't repeal the death penalty because of a...out of a sense of justice. If you do X, there should be an accompanying, oh, sanction, an accompanying punishment, crime and punishment. This crime deserves this punishment. That's legitimate. That's not why all of us say that we shouldn't repeal... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR FULTON: ...the death penalty. Some of us believe that the state has a right to defend innocent life. So for example, a person who's serving a life sentence who, while serving a life sentence, takes the life of another person, state has some responsibility for that. So let me ask you this. What if we were to repeal the death penalty and an individual who's sitting in life in prison takes the life of another person, either in prison or somehow orders and orchestrates the murder of a person outside the cell? Wouldn't we have, as a state, have some responsibility there? Wouldn't we be liable? Would we be open to a lawsuit in such a case for not properly defending the life of that innocent person? It's one of our highest obligations as a state. How much time, Mr. President? [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR FULTON: Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Fulton. Senators wishing to speak: Coash, McGill, McCoy, Campbell, Sullivan, Nelson, and others. Senator Coash, you're recognized. [LB36]

SENATOR COASH: Thank you, Mr. President, members of the body. We're talking about criminal justice here. It's not criminal fairness; it's criminal justice. So we have two choices in front of us. We've got LB36. We've got AM1452. These are two options. So the question we have to ask ourselves, colleagues, which one of these options meets the test of justice? LB36 meets that test. You commit the kind of crimes that will get you on death row, justice will be served when they carry out the sentence. But what about AM1452? Here's the question before us. Does serving life with no possibility of ever getting out, does that serve the cause of justice? We have to ask ourselves that question. Senator Fulton pointed out, does AM1452 serve the cause of safety? That's a high responsibility that we have. We'll have to ask ourselves that question. Yesterday we had a lot of discussion about cost. There are different costs to these two options. Should we consider those? Absolutely. Many times yesterday I heard members get up and say that the death...we have a death penalty on the books and we have no way to carry it out. We have no choice but to change our method to lethal injection because it's

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on the books and we need to be able to carry it out. We don't have a choice. Well, here's your choice, colleagues. Here's your choice. If you're worried about this sentence, LB36, being applied fairly, you have a choice. If you're worried about the sentence in LB36 being applied unjustly, here's your choice. Members, if you think life imprisonment, as indicated in AM1452, serves the cause...does not serve the cause of justice, LB36 is your bill. Nebraskans want us to put a period on this debate. All of our constituents have asked us, get this done. So here we are. We've got two choices. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Coash. Senator McGill, you're recognized. [LB36]

SENATOR MCGILL: Mr. President, members of the body, I rise primarily to thank Senator Council for her graciousness and professionalism as we worked through the process of determining which bills we would advance out of the Judiciary Committee. It was a very long process, as we talked about a lot yesterday, and I just want to reiterate that I voted to advance LB36 out of committee as part of an agreement in our attempt to narrow the death penalty when it wasn't possible. You know, I held up my part of the agreement and voted to advance LB36 and it wasn't that I necessarily supported that bill, because right now I have very mixed feelings about it. But I was extremely confident when I was the one who moved to advance Senator Council's LB306 because I do believe there are inherent flaws in the death penalty that do not justify it. I will not belabor the point myself but I will yield the rest of my time to Senator Nantkes. [LB36 LB306]

SENATOR CARLSON: Senator Nantkes, 3 minutes and 50 seconds. [LB36]

SENATOR NANTKES: Thank you, Mr. President. Thank you, Senator McGill. Colleagues, I want to talk specifically about protocol issues surrounding LB36 and lethal injection in general. I'm going to be quoting extensively from two sources. One, the "Thoughts on LB36: Problems with the Proposed Bill to Institute Lethal Injection in Nebraska," one Nebraska Law Review Bulletin 14, 2009, by Professor Eric Berger. Additionally, the Yale Law and Policy Review, "Lethal Injection and the Problem of Constitutional Remedies," also by Professor Eric Berger of the University of Nebraska College of Law, published May 2009. Professor Berger had a chance to present some of these issues to the Judiciary Committee and, particularly in relation to protocol surrounding secrecy and accountability and transparency, the committee amendment has attempted to rehabilitate the underlying bill in some of those regards. However, it does not adequately do so and I want to go through and talk about why. Professor Berger finds there are several provisions that would insulate Nebraska's lethal injection procedure from democratic review and would, therefore, risk creating a flawed and dangerous procedure. Additionally, recent inquiry into some lethal injection procedure's poor design and implementation has demonstrated that lethal injection is not the

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humane and simple method of execution many people have hoped and assumed it would be. To the contrary, the commonly used drugs, not specified in LB36 or the committee amendment, are now generally understood to create a significant risk of excruciating pain, especially if they are not carefully administered in a well-designed procedure by qualified medical personnel. Due to these risks, executions are or have been on hold in multiple jurisdictions across the country as courts, legislators, and governors reevaluate current procedures. The recent U.S. Supreme Court case, Baze, does nothing to address or stop that litigation, nor will it rehabilitate the flaws inherent in LB36. Additionally, Professor Berger tells us that one lesson from litigation around the country that we can take to heart in Nebraska is that the safety and, therefore, the constitutionality of execution procedures hinges not only on the four corners of the written protocol, if there is in fact even a written protocol and as not contemplated by LB36, but on also how the protocol is administered. In several states, there's evidence that written protocols have been implemented in a careless, unprofessional or haphazard fashion. By merely mimicking Kentucky's method, we have not had a thoughtful discussion on protocol. That promotes constitutional challenge and problem. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NANTKES: LB36 efforts to hide not just the creation but also the modification, implementation of these death execution protocols from public view will threaten to create similar problems in Nebraska. And finally in closing, Mr. President, the constitutionality of each state's procedure is fact specific. Litigation is, again, ongoing in numerous states because of the fact-specific nature involved in evaluating the protocols and their implementation. By merely mimicking or copying another state's protocols, which we don't even have anything in the committee record to demonstrate what Kentucky's protocols actually are,... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR NANTKES: ...it's hard to know if Nebraska's will be...be able to be carried out. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Nantkes and Senator McGill. (Visitors introduced.) Senator McCoy, you're recognized. [LB36]

SENATOR McCOY: Thank you, Mr. President, members of the body. I spoke yesterday of an individual by the name of David Dunster who has killed twice while in prison with a life sentence. He already had a life sentence when he committed his second murder, and he was serving two life sentences when he committed his third murder. This is part of the reason why I stand in opposition to AM1452 and in support of LB36. Senator Flood has also spoke of Jose Sandoval who had made shanks in order to kill guards

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while in prison. What is the protection for a corrections officer in such a case? If we were to not have the death penalty, what would be the repercussions, as it's been said, if another inmate or corrections officer were to lose their life to such an individual as David Dunster? And with that, I yield the remainder of my time to Senator Flood. [LB36]

SENATOR CARLSON: Senator Flood, 3 minutes and 40 seconds. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Thank you, Senator McCoy. I want to talk about Senator Council's amendment following what Senator McCoy said about the David Dunsters of the world that have killed in prison. I have an article here written by Mr. Cassell. I referenced it yesterday. His name is Paul Cassell, former federal judge. It was published in The Prosecutor magazine, October, November, December 2008. He uses the words "license to kill." Let's think about working inside of a prison with a bunch of inmates that don't have anything to lose because they're spending life on life on life. And he writes, on page 14 of this article, about how important it is to have the death penalty inside those prison walls and he says, and I quote: During the 1980s, when the federal death penalty was suspended, at least five federal prison officers were killed and the inmates responsible in at least three of those incidents were already serving life sentences for murder. Norman Carlson, the widely respected director of the U.S. Bureau of Prisons, testified, and I quote: In the case of someone serving a nonrevocable life sentence, execution is the only sanction which could possibly serve as a deterrent. We must impose the death penalty on prisoners sentenced to life who murder guards or other inmates in order to bring some semblance of security to our federal prison system. In short, this is Judge Cassell writing, those serving a life sentence without parole have a, quote, license to kill without the availability of the death penalty. Think about all those prison guards at the state penitentiary, Lincoln Correctional Center, Omaha Correctional Center, Tecumseh, any of our facilities in the state. You're working every day with some of the worst of the worst. They're serving a life sentence and there's no death penalty. Now I'm sure others are going to talk about other states but in Nebraska I think it's appropriate. There has to be that line. And I'm just talking about one of the aggravators. We've spent a lot of time in the last two days on the overly heinous aggravator. There are so many others. And when Senator Lathrop and I were going back and forth, there was this idea that we should make sure that... [LB36]

SENATOR CARLSON: One minute. [LB36]

SPEAKER FLOOD: ...someone has only been...there's more than one aggravator. Now I'm not saying that that's where they're at now, but it was part of the discussion and it got me to thinking. So I looked at the aggravators and I said, okay, could I support a death sentence change if one of these aggravators wasn't there, and I looked at all of them. Murder of a police officer, no, I've got to have that one. If somebody kills a police officer they should face the death penalty. Murder of a prison guard, yep, I need that

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too. Multiple killings, well, obviously. A killing where there's threat to so many more people, the Timothy McVeighs of the world. He'd also be under multiple killings. I couldn't walk away from any one aggravator on its face. We have a good system. We have aggravators that I believe... [LB36]

SENATOR CARLSON: Time. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Flood and Senator McCoy. Senator Campbell, you're recognized. [LB36]

SENATOR CAMPBELL: Thank you, Mr. President. Last night, as we came to a close, I was troubled by Senator Dierks's amendment and put my light on and waited patiently and then Senator Dierks withdrew his amendment. And I decided that because the hour was late, I would choose to speak to my colleagues today. And Senator Dierks raised the question about defense and people should be qualified to provide a defense certainly in a crime that may entail the death penalty. Senator or Attorney General Spire, and Senator Ashford and I talked about him just the other day, in the mid-1990s was very troubled by the fact that there may be uneven defense across the state of Nebraska for people who were indigent. And in 1995, the state put together the Nebraska Commission on Public Advocacy which provides indigent defense in capital crimes, violent crimes, and also works with DNA testing. The state of Nebraska put into effect and we the Legislature appropriate the funds for this to ensure that any county across the state of Nebraska that felt that they did not have sufficient resources for the defense and a public defender could turn to the Nebraska Commission on Public Advocacy. I would encourage you to Google that and take a look at the site. It is governed by a nine-member board appointed by the Governor from recommendations of the Nebraska Bar Association of people who have to have a great amount of qualifications in violent crimes or capital crimes. Six attorneys, one investigator, and two staff members watch over this system and stand ready to help any county, any. That means Douglas or Lancaster or Cherry County, whatever. And I hope, colleagues, that you will become very knowledgeable about this because one of the issues raised yesterday was whether we have the resources across the state to provide not only prosecution but defense. Thank you. Thank you, Mr. President. [LB36]

SENATOR ROBERT PRESIDING []

SENATOR ROBERT: Thank you, Senator Campbell. Senator Sullivan, you are next and recognized. [LB36]

SENATOR SULLIVAN: Thank you very much, Mr. President and members of the body. And I have to thank specifically several senators in this whole process. I admire and

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appreciate all the thoughtful work from the Judiciary Committee. Senator Flood has really helped me a lot with all of his factual information he's presented. And Senator Nantkes has given me reason to delve more deeply into the proposed legislation. And I also thank Senator Council for her amendment because we do...well, first of all, it's all part of the process, of this beautiful process we have in this Unicameral, and this amendment needs to be part of the conversation. And however we end the conversation and the debate today and however we vote, the conversation will not and should not end. It is far too difficult an issue and, quite frankly, in this imperfect world, with imperfect people, we need to revisit and continue the conversation on these difficult issues. Certainly I appreciated yesterday Senator Schilz's comment about how we had to make, as campaigners a year ago, had to make this decision in our own minds because our constituents wanted to know how we felt. But I certainly also appreciated Senator Dierks's comment and as we walked...left the Capitol yesterday I said, you know, you're...I admire you for your 14-plus years of standing fast with your stance on this, and he said, well, that doesn't necessarily make it any easier. And I agree with him completely because this is a very emotional issue. It calls upon each of us to dig deep into our value system and we use that in making our decision. However also, as I said in the onset, that I've listened very carefully to the conversation and the comments from all of the senators, and that's helped me. It's been a difficult position for me. And I will not only listen to the senators here but when I go back to the district I will continue to listen to my constituents because, as I said, I don't think that this conversation will end with our vote today. And I recalled several times in this whole process how I listened to a farm wife in central Nebraska who, in my estimation, is such a good person, she's a good Christian and a thoughtful person, and when she talked to me about this, she wasn't asking me how I felt but she was recalling how she had come to her decision about the death penalty and she said, well, you know, on Easter Sunday I look at the fact that Jesus died for our sins and as He hung on the cross, He turned to a prisoner next to him and said, I forgive you. But that prisoner still had to die. And in her simple way and in that simple statement, that farm wife helped me deal with a very difficult situation and a decision. Thank you very much. [LB36]

SENATOR ROBERT: Thank you, Senator Sullivan. Senator Nelson, you are recognized. [LB36]

SENATOR NELSON: Thank you, Mr. President, members of the body. I stand this morning in support of LB36 and against AM1452. Because Senator Carlson has been presiding and has not had an opportunity to speak on this issue, at this time I would like to yield my time to Senator Carlson, Mr. President. [LB36]

SENATOR ROBERT: Senator Carlson, 4 minutes 30 seconds. [LB36]

SENATOR CARLSON: Thank you, Mr. President. Thank you, Senator Nelson. Members of the Legislature, I listened carefully to yesterday's debate. I didn't speak and

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my intent is to speak once today. Found yesterday's debate very interesting. I was pleasantly surprised, maybe isn't a good word, but I heard a lot of scripture yesterday and I almost wanted to look around and see if Senator Chambers was here. But I like that. We have our value systems, each one of us, and if that value system is based on scripture, I think it's entirely appropriate to talk about it in our debate on the floor. Yesterday I heard the statement that the state should not be in the business of killing its citizens. I agree. Murder, no. Killing, maybe questionable. I would like an open discussion from Romans, Chapter 13, verses 1 through 6, and as we talk about capital punishment: revenge, no; appropriate punishment, yes. Respond in anger? No. Justice? Yes. We talk about cruel and unusual punishment. I think that we all agree that shouldn't be the case. What are the options? That's what we're discussing and I'm going to bring up something that's very graphic but it's true. One of our options could be we could put someone on death row in a position they couldn't move. We could bury a scissor into their head, into their brain. We could drown them with fluid. We could tear them apart limb from limb. We could suction out their brain. If that happened, there should be absolute outrage. This can't happen. You talk about cruel and unusual, we would not do this on the worst of our criminals. And why do we allow this to be the method of execution of the innocent, defenseless, the pure unborn? I stand here ashamed. I've been on this earth 67 years. Forty-some of those years I could have spent righting this wrong. What's wrong with us? Where are we going? What will we do to protect innocent life? We must change from being willing to shed innocent blood to protecting innocent life,... [LB36]

SENATOR ROBERT: One minute. [LB36]

SENATOR CARLSON: ...to allowing justice to prevail in a fair, correct and acceptable manner. If we don't do this, God will not help. Thank you, Mr. President. [LB36]

SENATOR ROBERT: Thank you, Senator Carlson, Senator Nelson. Those wishing to speak: Senators Lathrop, Council, Christensen, Harms, Flood, Dierks, Schilz, and others. Senator Lathrop, you're recognized. [LB36]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good morning. I stand in support of AM1452 and that should probably come as a surprise to no one since I've...having served on Judiciary Committee and having been here for two previous sessions, I've had the occasion to vote on this very same subject matter. We have a number of new senators and, as Senator Schilz correctly pointed out, this is oftentimes a question that you're asked when you're at the coffees and visiting with constituents, and what occurred to me is that the Judiciary Committee...the Judiciary Committee oftentimes deals with issues which seem...the issues that the public already has an opinion on. They already have an opinion on abortion. They have an opinion on the death penalty. They have an opinion on illegal immigration. And we in Judiciary Committee have hearings. And as so often the case with issues in the Judiciary

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Committee, there's more to the issue than is evident on the surface. I thought I would take an opportunity, my opportunity to speak, to talk about some of the things that we see in Judiciary Committee so that when people talk to you about the death penalty back at the county fair or at the next coffee you can say, you know what, whether you're for it or against it, you can tell them that there's more to it than just being in favor of it because I have a study in front of me. It's more of a compilation of statistics and it's from 1973, when effectively the death penalty came back on the...back into the legal system, through 19...pardon me, 2007, and here's the batting average of the death penalty and the reason we are concerned, the things that we see in Judiciary Committee that give us pause when we talk about the death penalty. In that period of time, there have been 205 death-eligible cases. All right, 205. That means that 205 people did something that had an aggravator. Of the 205 death-eligible cases, the death penalty was imposed in 31 instances. All right. So that's 15 percent of the death-eligible cases actually have a death sentence imposed. The system is starting to look bad if you're following these numbers. Of the number of people sentenced to death, only three were executed. That's 1.5 percent of the death-eligible murderers actually end up in the chair during this period of time. Sixty-three point six percent of all death penalty trials' sentencings have been reversed so as to require a new trial or a new sentence. Fifty-one point eight percent of all defendants, listen to this one, okay, because yesterday I said it isn't just about whether this...somebody ought to die, it's about the system. Fifty-one point eight percent of the defendants sentenced to death have ultimately had their convictions vacated, reduced to life, or sentenced to a term of years as a result of an appeal. Twelve point nine percent of the defendants on death row have died as a result of suicide. Seven point nine percent of all death sentences imposed by the district court have withstood appellate review and resulted in execution. [LB36]

SENATOR ROBERT: One minute. [LB36]

SENATOR LATHROP: The time it takes for one to go through the appeals that follow the imposition of the death penalty is somewhere around 20 years, on average. Twenty years they will sit in prison. That number is sure to grow after LB36 passes. It will generate a full ten years' worth of additional appeals, things that we don't have any control over. We can't stop the appeals. They're just part of the system and part of the process. So when people talk to you about the death penalty, if you are a proponent, you can begin the education process, even if you continue your support of the death penalty, and tell those people you see at coffee, tell those people at the county fair there's more to this than simply exacting the greatest form of punishment from somebody who has done a... [LB36]

SENATOR ROBERT: Time. [LB36]

SENATOR LATHROP: ...ridiculous form of murder. Thank you. [LB36]

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SENATOR ROBERT: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB36]

SENATOR COUNCIL: Thank you, Mr. President. While I hope to eventually get to the meat of AM1452, I feel compelled at this point to respond to some comments by several of my colleagues. I'll begin with my colleague Senator Friend. Because I don't know what the intent, and I don't want to mischaracterize the intent of your comments, I'll tell you what I heard. What I heard you saying was you're right, you can present about anything in this body for debate but if you have any suspicion that you don't have enough votes to pass that particular measure, you know, you may want to question whether or not we debate. And I say, I'm not characterizing what you said; this is what I heard. Now with regard to that, and perhaps I'm naive enough to believe that even if before we entered this Chamber I didn't feel that there were a majority of my colleagues who supported AM1452, perhaps I'm naive enough to believe that the actual purpose of debate in this Chamber is to use that as an opportunity to try to convince my colleagues that passage of a particular measure or opposition to a particular measure is the wisest thing to do. Perhaps I'm naive enough to believe that people take into consideration logic and reason as articulated by members on this floor in making those decisions. Which gets me to comments made by my colleague Senator Fulton. I took his comments as rather rhetorical questions, but I want to address the point he made. He said, could we, this body, enact a statute that says no law enforcement official in this state can use deadly force? His answer to that question was no. The answer to that question is, yes, particularly according to my friend Senator Friend, because if you have enough votes, and I quote, you can do anything you want to do. He asked a question, could we tell our National Guard that we can dispatch you but you can't kill anyone in the line of duty? His answer to that question was no. I agree with Senator Friend. If you got enough votes, you can do anything you want to do. The question is whether what we're doing is right or not, whether what we're doing is just or not, whether what we're doing is fair enough. That's what should dictate our decisions in this body. I'll now get to the comments by Senators Flood and McCoy. I believe, if we look at the facts as they exist, it will become patently obvious that this argument that we have to have the death penalty because we incarcerate killers who are threats to our guards in our correctional facilities, ladies and gentlemen, is a nonstarter. As of yesterday, we have 222 people incarcerated in general population in this state who are serving life sentences without a possibility of parole. They are serving those sentences pursuant to legislation enacted by this body that said, in those instances, Class IA felony, first-degree murder, the appropriate punishment... [LB36]

SENATOR ROBERT: One minute. [LB36]

SENATOR COUNCIL:is life without possibility of parole. And we keep hearing about Mr. Dunster. Yes, Mr. Dunster committed a murder after he was incarcerated in Nebraska. But no one bothered to ask why did we accept this man as a prisoner in our

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correctional system. He didn't commit those two murders in the state of Nebraska. By his own statement, Senator McCoy talked about Washington and Montana, and we decided to import a murderer into our system and he becomes the standard for what we should do in this state with regard to people who are tried and convicted in the state of Nebraska? I think not. And if we look at our general population,... [LB36]

SENATOR ROBERT: Time. [LB36]

SENATOR COUNCIL: ...as I alluded to yesterday, it occurs now. [LB36]

SENATOR ROBERT: Thank you, Senator Council. Senator Christensen, you're next and recognized. [LB36]

SENATOR CHRISTENSEN: Thank you, Mr. President. I listened yesterday and been listening today and several things bother me that has come up. I'm going to state right now I'm opposed to AM1452 for the way the committee done this and statements people made in committee, and I'll explain that. LB306 wasn't advanced prior to LB36 because several committee members didn't want LB306 kidnapped for LB36. I hope those that said that comment will vote accordingly now that LB306 is trying to kidnap LB36. I don't think you can state it one way and vote a different way. Is this debate really about the cost of appeals? We heard that yesterday. We've heard it today. I ask, will there not be appeals to avoid life imprisonment? Everybody wants to lower their sentence. There will still be appeals, same as there is against the death penalty. That's not the issue. Is the issue cruel and unusual punishment? As Senator Carlson said, I'll repeat a little of it that I had wrote down, would you allow a criminal to have his brain sucked out? No, that wouldn't gain votes of this body. Would you allow a criminal to be stabbed with a sword and bled to death? No, that wouldn't gain votes in this body either. But several of you would vote for partial-birth abortion protection, have the heads stabbed with scissors and their brain sucked out. Why would some worry about a pregnant woman on death row and then support killing a baby in an inmate? No consistency in rights. Is this issue a life issue? Then why would you allow abortion or the death penalty? There is a difference though. One is guilty, found by his peers; one is innocent, attacked by their peers or by their mother or whoever is doing it. Which one deserves the death, if either? You be the judge. I'd like to yield the rest of my time to Senator Flood. [LB36 LB306]

SENATOR ROBERT: Senator Flood, 2 minutes 10 seconds. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Thank you, Senator Christensen. I want to follow up on the numbers. Senator Lathrop talked about them. Of the 205 death-eligible cases since 1973, 31 were sentenced to death, 3 were executed. One of the numbers...and I found those interesting because he has shared those with me before. There's a discussion about a little over 50 percent or 51.8 percent of those have

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had their conviction vacated. Well, in the nineties, something pretty significant happened. The Eighth Circuit Court of Appeals ruled that Nebraska statute on the aggravator of being exceptionally heinous and the subsequent definitions and analysis provided by the Nebraska Supreme Court were insufficient so that anybody that was on death row, having been convicted following a jury finding that...or a trial court at that time finding that aggravator, had to be retried. That's where that 51 percent number comes in. Legislature changed the statute. The Supreme Court provided better guidance in its... [LB36]

SENATOR ROBERT: One minute. [LB36]

SPEAKER FLOOD: ...in its rulings, and that's why we had...we've already gone through this exercise, we made it better by better defining what an especially heinous act was. But what the numbers tell me that Senator Lathrop provides, and I have every reason to believe those are accurate numbers, is that if we're worried about being careful, that's what that shows. The people on death row in Nebraska are the worst of the worst. Those numbers tell me that we have exercised super due process, we've made it very difficult to get the death penalty in Nebraska, and that those that are there deserve it. That's what I take from it. And what I hear a lot of folks supporting LB...or AM1452 say is this is reckless, this is arbitrary, this is not right. I think that shows that we have been careful and that we have taken steps to make sure we do this in the right way. [LB36]

SENATOR ROBERT: Time. [LB36]

SPEAKER FLOOD: Thank you. [LB36]

SENATOR ROBERT: Thank you, Senator Flood. Senator Harms, you're next and recognized. [LB36]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in opposition of AM1452. I think the death penalty should be maintained in Nebraska for two reasons. One, it is a deterrent and recent studies have concluded that the death penalty does have a deterrent effect. A 2003 American Law and Economics Review study, "Does Criminal Punishment Have a Deterrent Effect," and I quote: Our results suggest that criminal punishment has a strong deterrent effect. Each execution results, on an average, in 18 fewer murders. A 2006 Stanford Law Review article, "Is Capital Punishment Morally Required," it states basically the same thing. The second reason that I oppose AM1452, it's the appropriate punishment using the death penalty. As I said yesterday, there are certain acts that are so heinous that they violate our social conscience and merit ultimate penalty. Punishments must be held in proportion to the crime for justice to be served. I think in the cases that I talked to yesterday, the death penalty is the only answer. And I would like to yield the rest of my time to Senator Flood. [LB36]

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SENATOR ROBERT: Senator Flood. [LB36]

SENATOR HARMS: Well, maybe not. Okay. All right, thank you, Mr. President. [LB36]

SENATOR ROBERT: Senator Flood, you are next in the queue and you are recognized. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. There's been a lot of things said this morning and it's been a wide-ranging discussion that I've appreciated from LB36, the green copy, to the broader discussion of AM1452. I want to go back to some comments that were made earlier about the method and the vagueness, the alleged vagueness of the method in the green copy. I want to return you to the fact that we're following Kentucky here and you can cite all of the Law Review articles you want, but I've got, we've got, the nation has a Supreme Court Opinion. That's the one that matters. That's the one that lays it out and, as drafted, as amended even with the committee amendment, I'm 100 percent confident that we have a constitutional...a constitutionally viable method of execution outlined here. And then the process will go forward and the processes and procedures will be determined under an APA process. But let's look at what we did have with electrocution. And to be fair to the opponents of LB36, they didn't like this either. But what the statute used to say is that the convicted person would be executed by passing a current through the condemned's body until dead. It wasn't like there used to be a protocol listed in the statute that talked about the three different currents and the voltage on each one. And this is a miserable discussion to have. I'm up front about that. But this bill here simply gives you the same thing that you had before and, under Baze v. Rees, is constitutional. The last thing I want to talk about in this opportunity to speak is transparency. There were problems with LB36 in the green copy as it related to the transparency to the rest of the state. The citizens of this state have a right to know how this is done. We worked very hard, the committee and I worked very hard with Media of Nebraska and we arrived at an agreement which you adopted yesterday, we all adopted, in the committee amendment. But let's remember that once this goes, especially with the APA review as required by the Judiciary Committee and I obviously support it, everything is going to be out in the open. The things that aren't out in the open have to do with public safety or personnel. No one needs to know when an inmate is moved from the Tecumseh State Correctional facility to the state penitentiary. That is a very secret, private move, as it should be, given the entire situation. The other thing is, if you work for the Department of Corrections and it's your job or, as a contractor, your job to deliver the drugs or to participate in this process, you should not have your name released. I feel very strongly about that. There are protocols in place that need to remain secret so that things work effectively, but for the most part this is a very transparent process. Citizens of this state will know what goes into this. As a courtesy, I know Senator Lathrop doesn't agree with many of the things I've said today. He wants some time. I'm happy to give it to him. I

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give him the balance of my time. [LB36]

SENATOR ROBERT: Senator Lathrop, 1 minute 35 seconds. [LB36]

SENATOR LATHROP: Thank you, Senator Flood. I appreciate the courtesy and I'm going to use it to comment on one of your statements. You've suggested that the statistics reflect that death row has the worst of the worst, and the reality is...the reality is that you can go into the prison population where people have not been given the death penalty for murder and find people that have done just as gruesome of a murder. And in the past occasions that we've had to take this up, I wish he was still here, not because Senator Gloor is now in his place, but Senator Aguilar used to respond to this by talking about something that happened in Grand Island, an awful, awful, awful murder of the most deliberate and heinous type. Death row is where we send some of the worst of the worst, not all of them, and that really gets back to whether or not the system, which is the death penalty, works in the state of Nebraska. That's the point. It doesn't. It doesn't because the worst of the worst get parsed out and some of them end up on death row and some of them end up in the population, and that's just one more problem with the death penalty in the state of Nebraska. Thank you. [LB36]

SENATOR ROBERT: Thank you, Senator Lathrop. Senator Dierks, you are next and recognized. [LB36]

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, the outrage that Senator Carlson speaks of, what about the inhumane method of lethal injection? Is there a challenge to the current practice of lethal injection that's used for veterinary medicine, the veterinary euthanasia? The current method of lethal injection used by veterinary personnel is universally supported. Is the method of lethal injection used for humans the same as the lethal injection used for animal euthanasia? No, sir. The method used by humans is very different from what is done to animals. Execution by lethal injection in humans uses three drugs. It's called a cocktail. The first drug is not pentobarb, which is a long-acting barbiturate that's used by veterinarians, but instead it's thiopental, also called pentathol, and it's an ultra-short-acting barbiturate. The use of an ultra-short-acting barbiturate means that an inadequate dose is administered...that if an inadequate dose is administered, the prisoner will not be unconscious throughout the procedure. Also, when lethal injection is used for executions, the drug that is used to stop the heart, potassium chloride, is excruciatingly painful. Nobody has explained why a painful drug like potassium is used. The use of a painful drug like potassium means that it is necessary for the prisoner to be under general anesthesia and pentathol is not a long-acting anesthesia. Also, when lethal injection is used for executions, a paralyzing drug called pancuronium is used. Pancuronium blocks the ability of a person to move, but does not make them unconscious. If unconsciousness is not maintained throughout the execution, then the prisoner will be paralyzed but awake. The prisoner would not be able to draw breath and would experience suffocation. Witnesses will not be able to tell

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whether the prisoner is in pain or suffering because the prisoner will not be able to move or wince or moan. Pancuronium is used, too, for the cosmetic purposes, to ensure that the prisoner appears tranquil. Is pancuronium used for veterinary euthanasia? Nebraska, like other states, does not permit the use of paralyzing drugs for animal euthanasia. They just don't. Can anybody administer the lethal injection drugs? Lethal injection drugs intravenously require having sufficient clinical experience to be able to sense or feel a problem with the injection. Problems have occurred during executions because the personnel lacked this experience. Also, if the person injecting the drugs injects at the wrong rate or with the wrong pressure, it can cause the drugs to leak and will not reach the circulation. When this happens, the prisoner may not receive adequate anesthesia and may reawaken during the execution. If the prisoner is not given enough anesthetic or sedative drug to keep them unconscious during the procedure, they will experience extreme suffering from the pancuronium and potassium. Does LB36 permit the use of potassium and pancuronium? The language in LB36 calls for the use of a substance or substances. [LB36]

SENATOR ROBERT: One minute. [LB36]

SENATOR DIERKS: There is no language that restricts or prevents the use of drugs that can cause severe pain or suffering, including potassium and pancuronium. Does LB36 require the use of a long-acting barbiturate, such as pentobarb, the drug used by veterinarians? The answer is, no, the broad language in LB36 of substance or substances permits the use of ultra-short-acting drugs such as thiopental. Does LB36 address the widely recognized problem of obtaining IV access for lethal injection? No, LB36 does not address the problem of IV access. Other states are setting in place measures to address the problem of the complexity of IV access for executions. Thank you, Mr. President. [LB36]

SENATOR ROBERT: Thank you, Senator Dierks. Senator Schilz, you're next and recognized. [LB36]

SENATOR SCHILZ: Thank you, Mr. President. Members of the body, good morning. Just like to make a couple comments here. First of all, as we sit here and debate any issue, I think that it should be said that Senator Council or any other senator has the opportunity and the prerogative and the right to try to amend any bill that they want to. I mean it's in...it's in the rules and we should support that. It's how we get things done. It's how we inject ideas into our system. I also believe that many other things...we're finally having the issue that we were debating yesterday all day. We've finally come to that part of the...with this amendment to actually debate the death penalty and what we...how we feel that should go forward here as a state. Obviously, as I said before, I am in support of LB36. I will have to say that I am not in support of AM1452. I think Senator Sullivan said some things that are spot on. What's that quote, from the mouth of babes we will know the truth? I tell you, I don't think it got much more succinct than what she said.

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That's right, people can be forgiven. It's good for us to forgive. But that does not mean that punishment should not be meted out for the offense. Senator Carlson is exactly right. There's all sorts of things floating around this issue that just make it really, really tough to deal with; makes every one of us within this body and around the state and around the country and probably around the world wonder, am I right in what I am thinking and am I right in what I believe? And where can I go to find the answer to set it all straight? Well, I'm not sure that the answer is out there and, once again, that's why we're here. I believe that the death penalty has a place within the state of Nebraska and our country. I believe that we should have a way to mete out that death penalty that does not cause undue pain. Because it should not be about revenge and it must not be about revenge, because if it is then we're all doomed to repeat the same things. And with that, I would give the rest of my time to Speaker Flood, if he so desires. [LB36]

SENATOR ROBERT: Senator Flood, 1:50. Senator Flood waives. Those wishing to speak: Senators Cook, Nantkes, Nordquist, Fischer, Mello, Fulton, and others. Senator Cook, you're recognized. [LB36]

SENATOR COOK: Thank you, Mr. President and members of the body. I rise in support of AM1452, as I am a cosponsor of the bill that is the amendment today. I would like to offer my perspective on this deeply personal moral issue of getting feedback from within my district on the campaign trail and now from a number of different directions. But I'm just going to do what I believe I was elected and why I believe I was elected to offer. So it comes from a couple of perspectives, the first being that demographically and statistically I am reflective of somebody who is most likely to be victimized by the violent crimes that we've heard described today, whether they have been committed by the people who occupy death row, the people who are in the general prison population, or the people who are wandering around who may never serve time for their crimes. I also want to offer some perspective as someone who holds the same faith tradition as Senator Carlson and a number of other members of the body, a faith tradition that is really without much formalized human authority but is inspired by what I believe is an in-dwelt Holy Spirit. I, too, am a student of the Bible and I take its application seriously to my life and my individual decisions, including the ones that I will make here. Senator Carlson made reference to Romans. That is in the New Testament for those of you who aren't as good at Bible baseball as some of the others on the floor, Romans, Chapter 13:1-6. I am going to read from the New International Version and I will read you all six verses of what Senator Carlson made reference to: Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God's servant to do you good. But if you do wrong, be afraid, for he does not bear the sword for nothing. He

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is God's servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to authorities, not only because of possible punishment but also because of conscience. This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing. I would like to suggest to the body and everybody who has been given the constitutional, man-made authority in here, I want to suggest that perhaps we are the rebels against God's authority when we seek to take someone else's life. And with that, I would yield the rest of my time to Senator Council, if she would like it. [LB36]

SENATOR ROBERT: Senator Council, 1 minute 28 seconds. [LB36]

SENATOR COUNCIL: Thank you, Mr. President. Thank you, Senator Cook. And I'll try to do this quickly and I'll come back on my own time, but I wanted to respond to Senator Harms, a colleague who I have a great deal of respect for but with whom I must respectfully disagree. During the hearing on LB36 and what is now AM1452, there was absolutely no evidence presented of any general deterrent effect of the death penalty on first-degree murder. In fact, 8 of the 11 people who currently are on death row committed their offenses since the last execution in the state of Nebraska. Obviously, the existence of the death penalty had no effect on those individuals and, as Senator McGill accurately stated yesterday, Nebraska averages 70 homicides per year statewide. That number hasn't changed. And during that period of time, we've had a death penalty. Now clearly, since the state Supreme Court's ruling, we couldn't implement that death penalty, but that didn't prevent death penalty sentences from being issued, as Senator Flood correctly stated yesterday during his testimony. So on the deterrent effect... [LB36]

SENATOR ROBERT: Time. Thank you, Senator Council and Senator Cook. Senator Nantkes, you are recognized. [LB36]

SENATOR NANTKES: Thank you, Mr. President. Again, good morning, colleagues. Earlier, some comments that I have placed on the record have been criticized by Speaker Flood in relation to we shouldn't just go around quoting Law Review articles. I don't think that we should criticize each other for doing thorough and independent research in relation to a serious policy topic and utilizing information from legal experts, qualified in this field is an authoritative source that is appropriate to be utilized. He may not agree with the conclusions, and that I appreciate, but there is nothing wrong with utilizing expertise from experts in the field, and it's important to utilize this because our time is limited, because we're under extraordinary constraints. So if I have to read into the record points, legitimate points of debate that need to be made in a far more artful manner than I can make on my own, I'm going to do that. And I'm sorry if it bothers the Speaker but that's important and that is my right as a senator and each of yours as well. Professor Berger provides an overview in his recent Yale Law Review about how death row inmates around the country have challenged the country the constitutionality of the

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lethal injection procedures by which they will be executed. This litigation often turns up serious problems which create a significant risk that the inmate will suffer an excruciating death, in apparent violation of the Eighth Amendment's prohibition against cruel and unusual punishment. He goes on to warn, several states have given little attention to these procedures and protocol designs and, in fact, have delegated these procedures to unqualified personnel. They failed to consult experts and they've concealed the details of the procedure from the public and refuse to reconsider their practices even as serious problems have come to light. Colleagues, look at the procedure, the parameters laid out in LB36, pages 8 through 11. Nothing in this legislation cures those problems and flaws with protocol that the professor warns us against. In giving so much attention to remedial concerns and so much deference to political branches, courts often may not distinguish between disingenuous suits manufactured to delay the inevitable execution and legitimate complaints identifying serious flaws with the state's method of execution. Given some states' lack of care and transparency in this area, such deference is unwarranted, as is the case presented with LB36. There's also been a lot of discussion about whether or not the U.S. Supreme Court case arising out of Kentucky is dispositive of this issue. Senator Flood believes it is. I believe it is not. Reasonable, legal minds can come to different conclusions. I said it before, I'm going to say it again today. That was a plurality opinion that failed to garner more than four votes on any single point of law. And, instead, Professor Berger tells us in his analysis of that issue, that although pre-Baze cases sometimes disagreed about the precise legal standards, parties and courts generally focused on whether a lethal injection procedure created an unnecessary risk of pain. This is not contemplated in LB36. LB36 doesn't even take into account the relevant legal inquiry on potential challenges to changing the state's method of execution to lethal injection, which may or may not be similar to what Kentucky put forward and was narrowly upheld by the Supreme Court. Senator Dierks spoke eloquently on why the procedures and the protocol matter and having trained medical professionals to carry those out matter, because it's not even about the cruel and unusual statement at that point in time, necessarily, but it's also about providing an appropriate record for an evidentiary basis for a fact finder to make these challenges as appropriate and necessary, which Mata tells us and Baze tells us you need to have a considerable... [LB36]

SENATOR ROBERT: One minute. [LB36]

SENATOR NANTKES: ...thank you, Mr. President, evidentiary record on these very issues surrounding protocol, which is not contemplated in LB36. Without these protocols, without careful attention to these issues, colleagues, Nebraska puts forth a grave risk. Can the state overcome this burden? Can the state or any plaintiff ever carry their burden of proof without this evidence being available and documented? It's not contemplated in the legislation. Additionally, lethal injection procedures are not the products of scientific review and, to the contrary, as is the case with LB36, are haphazardly conceived to merely mimic another state's... [LB36]

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SENATOR ROBERT: Time. [LB36]

SENATOR NANTKES: ...statutory scheme. Thank you, Mr. President. [LB36]

SENATOR ROBERT: Thank you, Senator Nantkes. Senator Nordquist, you're recognized. [LB36]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in opposition or, I'm sorry, in support of AM1452. And it comes back to me, as I said yesterday, to the culture of life. And, Senator Christensen, I stand with you wholeheartedly to oppose...to oppose abortion, to support legislation to limit and to restrict partial-birth abortion. Anything that destroys life, I'm there with you 100 percent. And it comes back to the belief that every life is a precious gift from God, that we are all creatures of God, created in his likeness, in his image, and that the destruction of one life sends us down a path that will...that could ultimately lead to the destruction of other life, including more innocent life. Somebody yesterday, you know, and I think maybe Senator Christensen also said, you know, are we equating innocent life with life on death row? For me, I probably can't. I probably don't. I definitely see a difference. But it comes back again to the point that we are all creatures of God, made in his likeness, and it's a slippery slope for us to go down as a society to say one life is more important, someone should live and someone should die. So how do we uphold that culture of life while protecting society? We've heard a lot today and a little bit yesterday about future dangerousness, potential safety issues in our prisons, and we can explore the possibility of protecting society by including a future dangerousness provision in our death penalty law. It would certainly aid us in protecting society. It...but...and it would eliminate the revenge factor; that we're not looking back to seek revenge or vengeance as a society, but we're looking solely to protect society. I think there's some merit to that discussion. The problems with our prisons, I think it needs...we need to have a significant discussion on reforms on how we protect this. There's one kind of piece of the logic, I guess, that I'm not fully comprehending and that is we know right now when people are put on death row, they're there for 20 years. So if somebody is in life in prison and they commit murder, like David Dunster, I guess I don't know in front of me here how long he's been on death row but maybe Senator McCoy or Flood or somebody might have. Would Senator McCoy? I just...just a technical... [LB36]

SENATOR CARLSON PRESIDING []

SENATOR CARLSON: Senator McCoy, would you yield? [LB36]

SENATOR NORDQUIST: ...would yield to a question. [LB36]

SENATOR McCOY: Yes. [LB36]

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SENATOR NORDQUIST: Do you have the date of when David Dunster was put on death row? [LB36]

SENATOR McCOY: One moment, Senator Nordquist. [LB36]

SENATOR NORDQUIST: I'm sorry. I didn't mean to put you on the spot. I just don't have it in front of me. [LB36]

SENATOR McCOY: He committed his first murder in 1972. I'm not sure exactly of the exact time when he then went to death row. [LB36]

SENATOR NORDQUIST: Okay. Maybe Senator Flood has it. Ninety-seven. May of '97. So 12 years he's been there with no incentive, no deterrence factor at all. He's probably going to be there for another 8, 10, 15 years. So I don't know how much of a deterrence it is to have that death penalty provision there if these people know that they're going to be there for another 20 years. And the safety issue, you got...how...I mean, if we're concerned about the safety in our prisons, these people are going to be there again for 20 years. So I don't... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NORDQUIST: ...I don't fully...I'm not fully comprehending the logic of that argument, but I appreciate the discussion and I hope we can continue to look at this as a overall encompassing issue of life. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Nordquist. Senators still wishing to speak include Mello, Pirsch, Coash, Hansen, Council, and others. Senator Mello, you are recognized. [LB36]

SENATOR MELLO: Thank you, Mr. President, members of the Legislature. I rise in support of AM1452, in part due to a lot of the comments I made yesterday, which fall along the lines of my belief in a consistent ethic of life, from conception to natural death and all that falls in between. That involves, on what the Catholic Church discusses, fighting against economic injustice, racism, euthanasia, and many other life issues. And with that, I'd like to read testimony from Cardinal Joseph Bernardin, who was the chairman of the Committee for Pro-Life Activities for the United States Conference of Catholic Bishops, to the United States Senate Judiciary Committee in September 28, 1989, regarding the federal use of the death penalty. The Catholic Bishops of the United States are deeply committed to defending the sanctity of human life. This belief stands in contradiction to the widespread practice of abortion, the lack of concern for the poor, the continued acceptance of racial and sexual discrimination, and the self-destructive use of drugs. It is also troubling that there is a growing acceptance in use of the death

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penalty. While various life issues are different and require separate analysis, we believe a consistent ethic of life suggests that the death penalty is not an appropriate response to crime in our contemporary society. The rapid increase in the large number of people on death row and the increased frequency of executions constitute a frightening reality. The United States Conference of Catholic Bishops is opposed to capital punishment. While not denying that the state has a right to employ the death penalty, the United States Catholic...the United States Catholic Bishops first declared their opposition to the use of the death penalty in 1974. The opposition has been reaffirmed many times since. We believe abolition of the death penalty would promote values which are important to us as citizens. We believe human life is so precious that the state should not take the life of any person, even one who has taken another life. Society must send a message that we can break this cycle of violence, that we need not take life for life. As a civilized society, we must struggle to find more humane, more hopeful and more effective responses to violent crime. Each of us bears a responsibility to foster an attitude in a broader society which affirms human life and rejects vengeance as a means to promoting justice. With that, Mr. President, I'd like to yield the remainder of my time to Senator Lathrop. [LB36]

SENATOR CARLSON: Senator Lathrop, 2 minutes and 5 seconds. [LB36]

SENATOR LATHROP: Okay. Thank you, Mr. President. Thank you, Senator Mello. Again, thank you for your thoughtful comments too. I truly appreciate them. I was going to talk about something else, so I'm trying to think what do I want to do with two minutes, but let me try this one on and respond maybe to something that Senator Carlson said and something that's been talked about before, and that is whether or not this is simply state-sanctioned revenge or is this truly a necessary form of punishment for the state to impose. And I know I see you're in the box, Senator Carlson, so you're not going to get to respond to this. But when we were in Judiciary Committee...I've practiced law in Omaha for almost 30 years now and that includes Omaha and Sarpy County, and one of the judges I tried my second jury trial in front of was a guy named Ron Reagan, not necessarily ideally...ideologically aligned with the other Ron Reagan, but a fine judge in Sarpy County, and he had in front of him the Joubert case,... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR LATHROP: ...which was maybe the most awful murder...murders in Nebraska. There's just no...nothing redeeming about this. And he sat through that, a lot of public attention on those murders, a lot of public attention upon John Joubert getting the death penalty and the death penalty ultimately being carried out. And when Judge Reagan saw that we were going to take up the death penalty, he called me on the phone and he said, Steve, I'd like to come down and testify. I didn't even know what he was going to say. He came down in front of Judiciary Committee and he said, you know, I've thought about this a lot. I don't think this was the only death penalty case he sat on,

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but he said, you know, in Joubert, first of all, if this...if there was any deterrent value he would have drug these children over to the Iowa side. He was close enough. He said, it's not, it's not a deterrent. And after sitting on the bench for--and I'm not sure how long Judge Reagan was on the bench but it was a long time, a long time--he said, my conclusion, after my years on the bench, after doing the Joubert case, is that the death penalty is nothing more than state-sanctioned revenge. [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR LATHROP: Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Lathrop and Senator Mello. Senator Pirsch, you're recognized. [LB36]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I appreciate the discussion that has gone on before this body and I do think that it is appropriate that we debate Senator Council's proposal here in AM1452, because whether you come with this amendment or not, the issue is just there below the surface with the underlying bill concept, LB36. And so I think it's good to have this debate and healthy. It is a very important topic. With that, I would yield the balance of my time to Speaker Flood, if he would like to receive it. [LB36]

SENATOR CARLSON: Senator Flood, 4 minutes and 15 seconds. [LB36]

SPEAKER FLOOD: Thank you, Mr. President. Thank you, Senator Pirsch. When you get into a debate like this, that's as emotional as it is and that is really on a life or death topic, you learn a lot about your side and you learn a lot about the other person's side or the other side's positions. And I think that's healthy. And I want to talk about Senator Nantkes' contention that I summarily dismissed the Law Review articles. This time last year, well, February of last year, 2008, I didn't know what was going to happen with the Supreme Court's rule of lethal injection in Nebraska, but they made it very clear. They didn't feel that lethal injection was appropriate and that it specifically violated the prohibition on cruel and unusual punishment. And as soon as that ruling came out on a Friday morning--I was in Norfolk--I got 50 phone calls from the media and others and senators. And they said, well, what are we going to do? And I said, I don't know. And they said, well, why not? I said, I don't know what the Supreme Court is going to do on lethal injection. They...you know, we don't have an electric chair. Well, why don't we just go take care of lethal injection? Well, I said, you can't because the U.S. Supreme Court has got this Kentucky case under review and nobody knows what they're going to do. I thought there was a chance they'd say the death penalty in the form of lethal injection violated the Eighth Amendment, too, and I wasn't going to run out and wave the flag on a certain side as it relates to the method of execution. And I also knew there were Law Review articles out there and that legal scholars whom I think I respect, I know that

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Senator Nantkes respects--I know Professor Berger, well-versed, bright, as she is--I knew there were a lot of people out there with a lot of different opinions. And when the Supreme Court case came down, that was the impetus for me to say, okay, I'm going to invest in this issue. If the United States Supreme Court is going to say this in Baze v. Rees and if we can do this right, I'm going to invest my time and make this a priority. This is my personal priority bill. I wouldn't be here today if the Supreme Court said no. I wasn't going to run up a hill where the Supreme Court said no. So in my comments earlier, as it relates to the Law Review articles, I'm only...I'm employing a weighing element here. I weigh the U.S. Supreme Court case greatly and I weigh some of the opponents' Law Review articles less than the Supreme Court case. Doesn't mean that I don't trust these people. It doesn't mean that they're not entitled to that opinion. People in here have strongly held beliefs about whether or not there should be a death penalty. I respect that. And at the end of the day, we all have to sleep with our vote. I know that. And it's important for people like me to read Law Review articles like this because it makes you think. It makes you question your own side. Senator Nantkes, Senator Council, Senator Lathrop, Senator Mello, you're making us think. [LB36]

SENATOR CARLSON: One minute. [LB36]

SPEAKER FLOOD: I hope...I hope that we have the same effect, those of us that are proponents, on each of you. And as I learned, working with Senator Lathrop on this, reasonable people can differ on this issue. I respect the fact that people are standing up and are laying it on the table and we're getting into the meat, because I think the Legislature has been well-served by this debate and I think people on both sides have handled themselves well. This isn't personal for me. It's about the policy. I feel strongly on it. I'm doing this because the U.S. Supreme Court has paved the way for it. I don't think I'd be here if they hadn't. And that's why I want you to advance LB36 and I would ask that you oppose AM1452. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Speaker Flood and Senator Pirsch. (Visitors introduced.) Continuing with debate, Senator Coash, you're recognized. [LB36]

SENATOR COASH: Thank you, Mr. President, members of the body. Turned my light on awhile ago when we were talking about corrections officers and I felt the need to step up and talk a little bit about that. In my district, I have the Nebraska State Penitentiary, Community Corrections. Right next to my district, I've got the D&E Center, the Lincoln Regional Center. I think I've talked to more corrections officers before I got here than anyone. I'm very concerned about the correction officers. I represent a lot of them. And David Dunster was brought up earlier. Let's consider this piece of work. We're worried about the David Dunsters and what they're going to do while they're in prison. What are we going to do with him? LB36 is going to pass. Let's not kid ourselves here. Then there's going to be appeals. And what are we going to do with David Dunster for the next 15 years? And as sick as he is, do we really think that holding the death

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penalty over his head is going to change his behavior? Do we really think, saying, now listen here, Dunster, you shape up or we're going to put you to death, you think he cares about that? You think it's going to change his behavior? LB36 passes; do we really think David Dunster is going to end up dead at the state's hands? I don't. I don't think, even with a method of lethal injection, he's going to be put to death. A lot of us have said this is not about vengeance, but let's not kid ourselves here. We're going to pass this. Nobody is going to feel good about it. We're going to feel like we did something. We're going to feel like we put some closure on this issue. But I would put to you, colleagues, that we won't. Appeals will go on. The inmates sitting on death row will eventually die, we all do, and it won't be because we have a good method, a constitutional method. It will be because of the appeals, and I think we all know that. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Coash. Senator Hansen, you're recognized. [LB36]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Two years and two days ago the bloody bodies of Lori Solie and her five-year-old, Tiara, was found May 17, 2007, in North Platte. The slaying shocked the communities of North Platte and the surrounding area due to the brutality. Each victim was stabbed more than a dozen times. Michael Grandon reached a plea deal in January, entering a guilty plea in the slayings and agreeing to testify against his girlfriend in exchange for avoiding the death penalty. Michael Grandon told several stories about what happened that night, but the autopsy revealed that Tiara, age five, had been strangled and stabbed 17 times. Her mother Lori had been stabbed 14 times and beaten with a baseball bat. Both Lori and Tiara also had their throats cut. When I was 11 years old, Charles Starkweather made his voyage across Nebraska and let ten people dead. I was 11 years old. We don't lock our doors out in the country. We locked our doors then. We went to school, we locked the doors at the school which we never did either. January 21 through January 29, 1958, Charles Starkweather killed ten people. In May, the trial started, May 5, 1958. Eighteen days later the jury pronounced him guilty and said he deserved the death penalty. On June 25, 1959, 13 months after the slaying, he died in the electric chair. This is my remembrance of how the death penalty should work. This is what we talked about. This is all our families were talking about. This is all what the grown-ups were talking about. This is how I remember the death penalty being used because of a man named Charles Starkweather. Mr. President, I need a lawyer and I'd like to ask Senator Pirsch some questions, if he would yield. [LB36]

SENATOR CARLSON: Senator Pirsch, would you yield? [LB36]

SENATOR PIRSCH: (Laugh) Thank you, Mr. President. I would yield. [LB36]

SENATOR HANSEN: Thank you, Senator Pirsch. The question I would have is in the

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Michael Grandon case there was a plea bargain. He brutally murdered two people in North Platte but he had a plea bargain with the district attorney, the prosecuting attorney. And since you're a former prosecuting attorney, that's why I chose you to ask these questions. If we would happen to vote the death penalty out in the state of Nebraska--and I believe in some year, sometime down the road we probably will--will the plea bargains continue and would the plea bargain then be the most severe case we could give someone, the most severe penalty is life in prison without parole? Will a plea bargain be in the picture then? [LB36]

SENATOR PIRSCH: Well, I appreciate that. There are a tier or a range of penalties that are set forth in Nebraska law, the highest penalty of course being a Class I felony, which carries with it the penalty of death. And to the extent that that is...below that there are other ranges of penalty, a Class IA felony, which carries with it life imprisonment without parole, and below that, Class IB, a Class IB felony and so forth. And so, you know, just my experience has been... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR PIRSCH: ...as a prosecutor that, yes, you know, you are always looking for the best ending as a...someone who's...a criminal who's charged with a crime and so plea agreements would go on even after we are to remove that. I did pose that question to the county attorney of Douglas County that to what extent, in his opinion, did...you know, did having this Class I felony that involved the penalty of death help facilitate pleas to lower...that brought about lower convictions, Class IA felonies, which meant life imprisonment, and he did think that that was an important tool to achieve that. And so it does, as a prosecutor, plea agreements are part of it, part of what you do depending on the nature of the facts, the strength of your case, etcetera, and I would imagine would be whether or not you have a Class I felony that involved death going forward in the future or not, so. [LB36]

SENATOR HANSEN: Thank you, Senator Pirsch. [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR HANSEN: Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Pirsch and Senator Hansen. Senators still wishing to speak include Council, Lathrop, Flood, Wightman, Nelson, and others. Senator Council, you are recognized. [LB36]

SENATOR COUNCIL: Yes. Thank you very much, Mr. President. I'm going to try to finish my comments with regard to the deterrent effect or lack thereof of the death penalty. And there's been some discussion, as a result of Senator Hansen and Pirsch's

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dialogue just then, that talked about pleas. Now as I stated earlier, there was absolutely no evidence introduced during the hearing on LB36 and what is now AM1452, to establish the general deterrent affect of the death penalty in Nebraska on the commission of first-degree murder in the state of Nebraska. But there was evidence of the effective use of the existence of the death penalty to extract confessions from innocent people, the Beatrice Six being the most publicized of those instances. Those individuals were threatened with the death penalty in exchange for their admission of guilt. Now I know, and someone made the statement, reasonable minds still differ as to whether or not these individuals were involved in that horrible homicide, but I want you to take note of the fact that during the investigation of that particular homicide the FBI developed evidence that showed that that crime was committed by one person. The FBI developed that during the investigation. That information was ignored and, instead, the prosecution pursued the six individuals that they did pursue. I commend one of those six, Joseph White, because he maintained his innocence from the beginning. He, unlike his other five codefendants, didn't go the plea bargain route. Instead, he went to trial. And despite the fact, and I haven't looked deeply enough into the transcript of those proceedings, don't know what happened to the evidence that the FBI developed that said it was only one person, but he was convicted and sentenced to life. Now Senator Rogert, to his credit, introduced LB260 in an attempt to address that situation and, quite frankly, the legislation that was passed, I don't know that it will have any effect ultimately on compensating individuals like Joseph White for taking his liberty for 20 years. But the more recent case of the use of the death penalty to extract a confession from an innocent person happened in April 2006 and it happened in Cass County and it happened to Matthew Livers, who was then 28, who, after 11 hours of questioning, confessed to the murder of his uncle and his aunt and implicated his cousin. Again, Mr. Livers, like the Beatrice Six, was threatened with the electric chair during the course of that interrogation. He confessed. The problem was he didn't do it... [LB36 LB260]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: ...and neither did his cousin. And in fact, the people who actually committed that horrific crime are serving life sentences today. So when we talk about the effect of the death penalty, we don't have any evidence that it deters people from committing homicides. The only real data we have is that it is used to force confessions from innocent people. And the question that was asked by Senator Hansen, will plea bargains continue, yes, plea bargains will continue but it has nothing to do with the fact that we do or we don't have a death penalty. It has everything to do with the burden on the prosecuting attorneys' offices at the time, whether they believe that it's in the best interest of the public to take the plea that's being offered as opposed to taking the county to the expense of a lengthy trial, which the taxpayers end up paying for. There is a cost-benefit analysis that is undertaken in the decision whether or not to take a plea or try a case. [LB36]

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SENATOR CARLSON: Time. Thank you, Senator Council. Senator Lathrop, you're recognized. [LB36]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to continue with my discussion about the statistics, except talk about them in the context of what it means to the victims' families. So everyone who is murdered and whose responsible person is looking at the death penalty, what's that mean to the victim's family, those that are left behind? Because if you think this through, I gave you the statistics, 85 percent of those who have committed a death-eligible homicide will not get the death penalty. That's at the trial level. So 85 percent of the families who have lost a loved one in a situation we would include as an aggravator, so in a heinous, maybe it's a police officer, you name it, 85 percent of the time we're going to tell those families there is no death penalty for you. That's a lot. We're not using it as much as we...as the debate would suggest that it gets used. It's not. Eight-five percent of the time we'll tell families we're not seeking the death penalty in this case. And for those where the death penalty is imposed, and that was 31 as of the time of the study, most of them, the biggest share are not going to be imposed. What's that do to the victims? Consider if you're the victim's family. You go to trial. You sit through this terrible ordeal and the person is finally given the death penalty and then starts 20 years worth of appeals. It is a roller coaster for these people. They are told he's got the death penalty; the state will take his life for what he did to your son or daughter. And they begin 20 years' worth of appeals, and every time that guy has something happen in his 20-year process he's back on the TV. And the family has hope because an appeal failed, and then they find out another one has been filed and a stay has been issued and the hope is dashed. And they are on an emotional roller coaster as they ride out these 20 years. Is that really fair to them? And I say 20 years. It's going to a lot longer with LB36, and I don't take any delight in that. It's the nature of imposing a new type of...a new form of death penalty is going to create even more appeals. And so these families, that we promised some relief with the death penalty, go on a 20- to 30-year emotional roller coaster. Is there closure in any of that? I would think the parents are probably long gone by the time the death penalty is imposed, in the few instances where it is. And then think about half of them, half of them go on that roller coaster only to see the defendant taken off of death row and put in the population for the rest of their life. How about those folks? The death penalty as an institution is an empty promise to all but a very few victims' families. It is an expensive, empty promise to families in the state of Nebraska who believe that the institution will effectively punish, through death, someone who's killed a loved one. But it only rarely does that. I bring this up because I don't know if we're at a place where minds are still changing, but I believe it is important that when you leave the floor today and somebody asks you about the death penalty, you can explain that it is far more complicated,... [LB36]

SENATOR CARLSON: One minute. [LB36]

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SENATOR LATHROP: ...far more complicated than on the surface it appears to be, which is simply a matter of are there deaths so gruesome that the death penalty is appropriate. I think everybody can agree with that. Just about everybody could agree that that's true. But in reality, if we look at it as an institution, we are spending lots of money only to fulfill a promise to a very small segment of the victims' families. Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Lathrop. (Visitors introduced.) Senators still wishing to speak are Senators Wightman, Nelson, Dierks, Gloor, Haar, and others. Senator Wightman, you are recognized. [LB36]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I did want to address the body at least once with regard to AM1452. I do rise in opposition to AM1452. There's been a lot of great discussion here. Probably few minds have been changed. I suspect those that yesterday were in favor of the death penalty are still in favor of the death penalty; those who are opposed to the death penalty probably are still opposed to the death penalty. Nevertheless, there have been a lot of points raised and I observed and listened to those comments. On some of them, I would like to make some statements. On deterrence, I've talked about deterrence a number of times over the last three years. I know that there are many studies and many conclusions reached from these studies. I hear those who are in favor of...let's say those who are opposed to the death penalty pretty much totally eliminate from consideration those studies and statistics that say that it is a deterrent. On the other hand, I hear...I hear a lot of the members of this body that have stood up and said that it is a deterrent. So I think it depends a lot on where we are. We tend to believe those studies that reinforce our views, but there certainly is a lot of information out there in the way of studies, in the way of conclusions that are reached from those studies that indicate that deterrence...there is deterrence as a result of the death penalty. And one of the studies that I reviewed just recently said that common sense, in and of itself, would indicate that there is a deterrence effect. Now how great that is I don't know, but some of the studies indicate that there could be quite a few lives saved, innocent lives saved, as a result of having the death penalty on the books. I believe that is the case, but to actually prove it, it becomes almost impossible to prove. The other thing that I probably hear the most from the body, particularly those opponents of the death penalty, is proportionality and fairness, fairness in the application of the death penalty. I guess I'm not as troubled as some by the fact that perhaps someone who committed an even more heinous crime than someone who's been sentenced to death is sitting with life imprisonment. We are never going to be able to have an absolute method that we rate everybody as far as how severe or how heinous their crime is. But we have...if we have the death penalty on the books, Senator Flood has made several comments that indicate that our current death penalty provisions are about as complete, about as carefully crafted as any state probably. And as I remember the statistics yesterday, it seems there are 37 states, plus the United States, that all have the death penalty. So we're not out here all alone in

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having a death penalty. But it seems to me that if somebody commits a crime and there are enough aggravators, whether it's one or more, and they outweigh the mitigators, that we have pretty carefully crafted when that death penalty shall be applied. And it just seems to me that if somebody receives the death penalty under those rules, he has little complaint that maybe... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR WIGHTMAN: ...somebody else did not receive the death penalty. So I believe all of this discussion is appropriate. I would bring up one thing. I think it is appropriate to consider one's position on the abortion issue when one is considering their position on the death penalty. I know there are a lot of arguments on both sides, and we heard some of the arguments on the abortion issue last Thursday, but I think that we can consider that somewhat in conjunction with these two...with...in conjunction with each other. So I think we are going to each reach our own conclusion, but I would...I would certainly ask that we vote no on AM1452. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Wightman. Senator Nelson, you are recognized. [LB36]

SENATOR NELSON: Thank you, Mr. President, members of the body. I rise again in opposition to AM1452. I was interested in Senator Cook's reading from Romans 13. I've taken another look at that. I read it a little differently, and I'm going to paraphrase just a little bit, but here's what it says to me. God has established government authority. Those who rebel against that authority will bring judgment on themselves. If you do wrong, be afraid for he, and meaning government authority, does not bear the sword for nothing. He is God's servant, an agent of wrath, to bring punishment on the wrongdoer. I'd like to read into the record some of the statements of our Supreme Court in Baze v. Rees, their rationale for the finding that the protocol in the Kentucky case was not cruel and unjust punishment. We begin with a principle settled by Gregg that capital punishment is constitutional. It necessarily follows that there must be a means of carrying it out. Some risk of pain is inherent in any method of execution, no matter how humane, if only from the prospect of error in following the required procedure. It is clear then that the constitution does not demand the avoidance of all risk of pain in carrying out an execution. The petitioners can see that, if performed properly, an execution carried out under Kentucky's procedures would be humane and constitutional. That is because, as counsel for petitioners administered...admitted in oral argument, proper administration of the first drug, sodium thiopental, eliminates any meaningful risk that a prisoner could experience pain from the subsequent injections of pancuronium and potassium chloride. Simply because an execution method may result in pain, either by accident or by an inescapable consequence of death, does not establish the sort of objective intolerable risk of harm that qualifies as cruel and unusual. It appears to me that, from what I read,

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that LB36 pretty carefully follows that. Yes, there probably will be appeals because we know that those object to the death...that those who object to the death penalty are going to do everything that they possibly can to find a way around the penalty of death and the procedure that we prescribe through lethal injection. We haven't talked much about lethal injection. We've talked about the death penalty. This is for the fourth time and I suppose we're going to have to reconsider it every year, and that's all right with me. But we cannot simply have a bill that's going to go on for 100 pages that's going to cover every possibility that has to be overcome or has to be addressed in the administration, in the protocol, in the various procedures. We do the best we can at this point and it's going to be up to the courts probably to interpret what was meant and what is not going to be cruel and unusual punishment. I'm interested in the statistics about how few people actually suffer the penalty of death. In a way, it's an indictment of our legal system and, yet, it shows how compassionate we are. Appeal after appeal... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR NELSON: ...after appeal has been brought and it does take time. I had a law professor of criminal law argue the point that it is more cruel to incarcerate someone for 40 to 60 years than it is to put them to death, and I suspect that that might be right. Even if someone who has been given the death penalty has to sit in prison for 20 years, that is punishment that certainly is cruel in many ways but it is punishment and it's difficult enough certainly for them to sit there and worry about whether they're going to live a natural life for the remainder of their days. I feel that we have considered these issues to the extent that we can and that it is time to move on; that we ought to pass LB36 and, in so doing, we will be following what we know... [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR NELSON: ...to be most of our constituents' want. Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Dierks, you are recognized. [LB36]

SENATOR DIERKS: Thank you, Mr. President. I want to return to the issue of lethal injection for the death penalty. This is a case of a young man who was given the lethal injection in Florida. It happened in 2006. A death row inmate who had argued that Florida's execution procedures were cruel hung on for much longer than usual after his lethal injection, once again calling into question the way the state kills condemned prisoners. Angel Diaz winced, his body shuddered, and he remained alive for 34 minutes, nearly three times as long as the last two executions. Department of Corrections officials said they had to take the rare step of giving Diaz a second dose of drugs to kill him. A second dose is part of their protocol and was anticipated in this case

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because Diaz has had liver disease which they said can slow the time it takes for drugs to metabolize. Defense lawyers said Diaz's execution was so unusual that it could once again upend executions in Florida. Obviously, there was something very wrong here said Neal Dupree. He's the supervisor of the capital collateral regional counsel office for south Florida, which represented Diaz in his appeals. Dupree, who sat in the front row while Diaz was executed, said the procedure appeared botched, particularly when Diaz squinted his eyes and tightened his jaw, as if in pain. Twenty-six minutes into the procedure, Diaz's body suddenly jolted. It looked like Mr. Diaz was in a lot of pain, Dupree said. He was gasping for air for 11 minutes. This is a big deal. This is a problem. Diaz began snoring after the last...after the first dose, and was given...after the first dose was given and never regained consciousness. The execution team called for the second dose after noticing on heart monitors that Diaz was not dying. Capital defense lawyers have said lethal injection, which in Florida and most states is given with a three-drug cocktail, has its own cruelty problems. They cited a recent study that shows the painkiller administered first wears off before the third and fatal drug kills the person. That third drug can cause excruciating pain, the study said, but no one would know because the second drug in the cocktail paralyzes the person and you can't tell it by watching. I wonder how much we rely on...in LB36, because LB36 allows use of agonizing chemicals such as pancuronium and potassium that we talked about before. It does not require that the procedure be painless or inhumane. Other states do require that. Protocol not locked in is flexible. The warden can change it at the last minute with LB36--a big problem in other states, a source of expensive litigation. Use of pancuronium prevents witnesses and press from knowing whether it is humane or cruel. Again, I find this procedure impossible. I will support Senator Council's amendment, but I will not support LB36. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Dierks. (Visitors introduced.) Senator Haar, you are recognized. [LB36]

SENATOR HAAR: Mr. President, members of the body, it should come as no surprise to anyone that I'm opposed to the death penalty. I even said that over the radio during my campaign. During biblical times, stoning was used to kill people, and I suppose people argued about the proportionality and the deterrent and the just and the fairness of that. I watched the movie on PBS the other night of Oliver Twist. At the time of Oliver Twist, young boys who were caught pickpocketing were hung sometimes, and I suppose they talked about whether it was a deterrent and whether it was just and fair and proportional. I would like to suggest that we become more civilized and, as we become more civilized, we look at our definitions of what is deterrent, what is just, what is proportional, what is fair. And if you look at...and I have listened very carefully to all of the testimony, state-sponsored humane execution, how civilized is that? State-sponsored humane execution, those words don't even seem to go together in my mind. I would like to tell you that during 2007, 24 countries carried out executions, 88 percent of those were in just five countries. China had the most, Iran, Pakistan, Saudi

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Arabia, and the United States carried out 88 percent of all the executions in the world. And I would just like to conclude by reading the list of countries that allow the death penalty in this world, and there are 70 of them, and see if we really fit into this group or, to me, it seems like we behave like a Third World country, a Third World country in this list. Here are the people who allow for the death penalty: Afghanistan; Antigua and Barbuda; Bahamas; Bahrain; Laos; Lebanon; Lesotho; Libya; Bangladesh; Barbados; Belarus; Belize; Botswana; Burundi; Cameroon; Chad; China, they have the most; Comoros; Congo; Cuba; Dominica; Egypt; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Ghana; Guatemala; Guinea, Guyana; India; Indonesia; Iran; Iraq; Jamaica; Japan allows it; Jordan; North Korea; South Korea; Kuwait; Malawi; Malaysia; Mongolia; Nigeria; Oman, Pakistan; Palestinian Authority; Qatar; St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadas; Saudia Arabia; Sierra Leone; Singapore; Somalia; Sudan; Swaziland; Syria; Taiwan; Tajikistan; Tanzania; Thailand; Trinidad and Tobago; Uganda; United Arab Emirates; Vietnam; Yemen; Zambia; and Zimbabwe. Those are our partners in the death penalty and they're all...most of them are Third World countries. I would simply like to suggest that there will always be heinous crimes but as we become more civilized in how we define deterrent, justice, fair, fairness, and proportionality, that I believe we, too, will outlaw someday the death penalty in the United States... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR HAAR: ...because definitely we're out of step with the civilized world right now. Thank you very much. [LB36]

SENATOR CARLSON: Thank you, Senator Haar. There are no other lights. Senator Council, you're recognized to close on your amendment. [LB36]

SENATOR COUNCIL: Yes, thank you, Mr. President. I would like to begin my closing by announcing to my colleagues that this morning, just this morning, Alabama death row inmate Daniel Wade Moore was found not guilty by a jury. This was a retrial. He had been previously sentenced to die. He is number 133 exonerated from death row. That's one of the most compelling reasons for approving AM1452. Death penalty is the ultimate irreversible punishment. We cannot afford error. And the data that has been presented by Senator Lathrop and others definitively shows that at least 10 percent of people sentenced to death row are innocent and would be subject to death for crimes they would not have committed. I'm going to focus my closing comments on the preface...the prefatory statements to AM1452, which are found in Section 1(1): "Life is the most valuable possession of a human being." Everyone in this body agrees with that. "The state should exercise utmost care to protect its residents' lives from homicide, accident, and arbitrary taking by the state." Most agree with the first part; many disagree with the latter phrase "arbitrary taking by the state." But there's been evidence presented of the arbitrariness and capriciousness and discriminatory aspects of the

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death penalty. "(2) The experience of this state with the death penalty has been fraught with errors, frustration, and delay due to constitutional mistakes in the statutes, defective legal procedures and implementation of the statutes, lack of uniformity in application, and inordinately heavy expenditures of money and time." Senator Lathrop and others have more than adequately presented the data to support the statements found in subparagraph (2) with the exception of the last phrase, "inordinately heavy expenditures of money and time," because we can't seem to get that data. Every other state that's considering repeal of the death penalty can get that data. I find it interesting we can't get a cost associated with moving to lethal injection, nor can we get a cost savings from eliminating the death penalty when every state that's considered it this legislative session has been able to identify those cost savings. And in that regard, Senator Christensen raised a question about, well, everyone will still have an appeal right. Well, the difference between an appeal right under a death penalty sentence and an appeal right under a life in prison sentence, as Senator Flood so accurately pointed out that under the new procedures that review by the U.S....the Nebraska Supreme Court is automatic, so that cost is associated with every single death penalty case. That cost is not associated with every single case of a person sentenced to life or life without possibility of parole. "(3) The financial cost of attempting to implement the death penalty statutes are not justifiable in light of the other needs of this state and particularly because evidence does not establish that the death penalty effectively deters first-degree murder." There's a difference of opinion as to whether that statement is accurate. Senator Wightman states that by advancing the proposition that it doesn't serve as a general deterrent that we are ignoring the data that says that it is. There's no ignoring the data. Let's boil down to the point that Senator Wightman pointed out. Let's talk about common sense. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: Let's not talk about competing studies. Let's talk about common sense. Common sense tells me if the death penalty is a deterrent then I shouldn't consistently see 70 homicides committed, on average, in the state of Nebraska. Common sense tells me if there's a deterrent, at some point in time those homicides should go down. That's what common sense tells me. "The Legislature remains troubled by the lack of any meaningful procedure in the courts to ensure uniform application of the death penalty throughout the state." That Senator Flood took issue with that, reasonable minds can differ, Senator Flood, and that statement in there does not ignore the attempts that have been made procedurally, statutorily to address that issue. But the question, the pivotal question is meaningful. Reasonable minds can differ on that, since we're not talking proportionality. "The history of attempts to carry out the death penalty in Nebraska demonstrates an inordinate burden on the justice system and on the lives of the innocent families and associates of both the victims and the convicted parties." [LB36]

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SENATOR CARLSON: Time. [LB36]

SENATOR COUNCIL: Senator Lathrop addressed that adequately. I would urge for your vote in favor of AM1452. [LB36]

SENATOR CARLSON: Thank you, Senator Council. You've heard the closing on the amendment. The question is, shall AM1452 be adopted? [LB36]

SENATOR COUNCIL: Call of the house and a roll call vote, please. [LB36]

SENATOR CARLSON: Call of the house has been requested. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB36]

CLERK: 44 ayes, 0 nays, Mr. President, to place the house under call. [LB36]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Christensen, the house is under call. Senator Council, how would you like to proceed? [LB36]

SENATOR COUNCIL: Roll call in regular order, please. [LB36]

SENATOR CARLSON: Thank you. Senator Christensen, the house is under call. Mr. Clerk, all are present or accounted for. Please proceed. [LB36]

CLERK: (Roll call vote taken, Legislative Journal page 1598.) 13 ayes, 33 nays, Mr. President, on the amendment. [LB36]

SENATOR CARLSON: The amendment is not adopted. Mr. Clerk, items for the record. I raise the call. [LB36]

CLERK: Mr. President, I have a Reference report referring two study resolutions or, excuse me, two resolutions to standing committee for purposes of conducting hearings. Notice of hearing from the Executive Board. Name adds: Senators Haar, Dubas, Fulton, Carlson, McCoy, Christensen, Schilz, and Cook want to add their name to LB561; Senator Giese to LR139; Senator Giese and Hansen to LR240. (Legislative Journal page 1599.) [LB561 LR139 LR240]

And, Mr. President, a priority motion: Senator Giese would move to recess the body until 1:30 p.m. []

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SENATOR CARLSON: We have a motion to recess. You've heard the motion. All in favor say aye. Opposed, the same. We are in recess until 1:30 p.m. []

RECESS []

SENATOR CARLSON PRESIDING []

SENATOR CARLSON: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record. []

ASSISTANT CLERK: There's a quorum present, Mr. President. []

SENATOR CARLSON: Thank you, Mr. Clerk. Do you have any items for the record? []

ASSISTANT CLERK: Mr. President, I do. Amendments to be printed to LB35 and LB35A from Senator Ashford. Report from General Affairs on the appointment of Janell Beveridge to the State Racing Commission, and your committee on General Affairs reports LB404 as indefinitely postponed. (Legislative Journal pages 1600-1601.) [LB35 LB35A LB404]

SENATOR CARLSON: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda. []

ASSISTANT CLERK: Mr. President, on LB36 that was considered prior to lunch, I have nothing pending at this time. [LB36]

SENATOR CARLSON: Thank you, Mr. Clerk. The floor is now open for debate. Senator Ashford, you're recognized. [LB36]

SENATOR ASHFORD: Thank you, Mr. President and members of the body. First of all, I want to go through two or three points rather quickly as Chair of the Judiciary Committee and then turn the debate over to others. But the first thing I'd like to say is really a heartfelt thanks to this body and to my colleagues. This is my 11th year in the Legislature and I've never been so proud of an institution as I am today of the Nebraska Legislature. It's hard to single people out for the depth of their feeling and the depth of their concern on this issue. But I was struck by Speaker Flood and Senator Fischer and Senator Sullivan and Senator Mello and others who really, I think, expressed the deep feelings that we all have on this issue and I think most importantly, express and represent the citizens of this state in a very positive light. And so I'm immensely proud. I want to make a couple of points about these matters, just from my perspective as Chair of the Judiciary Committee. There was a great deal of discussion about whether or not we are reinstating or not reinstating the death penalty by LB36. And I...and minds can

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differ on this issue. I researched this matter over the last couple of months really, and it's my belief that we are not reinstating the death penalty. That the death penalty is in effect and has not been repealed. And I base that on my reading of the Mata case. Also in the Baze case the Supreme Court very clearly reflected the fact that at no case in the history of the Supreme Court has the Supreme Court overturned a state's method of execution. So there is no real Supreme Court ruling on that issue. And I understand that my colleague, with whom I have immense respect, Senator Lathrop differs with me on that issue. But I don't see that we have repealed it and that we are now reinstating it. Secondly, it is my policy preference, mine alone, and to some degree, I think the policy preference of the Judiciary Committee that the death penalty be substituted by life in prison without parole. My preference, policy preference is that we do that. And my reasons for that are, my reason for that primarily is that whether or not repealing the death penalty will save money or not is a debatable issue. My gut is that we would save some money by repealing the death penalty and not expending the time and effort that we take in these cases. I would rather have that money go to prevention. That's just me. That's my feeling that if we put the kind of money into prevention that we are expending on these appeals, that we can stop people from committing the horrendous crimes. Not all of them, certainly, but the horrendous crimes and murders that go on in our state. I was struck by Senator Council on a couple of occasions talking about the number of homicides that we have in the state and there are around 70 average homicides and there are 11 people on death row. That means that there are numbers of murders that do not result in the death penalty and I agree with Senator Flood, that's for a variety of reasons. But it is my belief that if we're talking about resources and allocation of resources, my preference would be that we allocate resources, those resources to prevention. That's just my view. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR ASHFORD: Finally, I am going to vote to advance LB36 because I do believe Nebraskans want the death penalty. But I also believe that they want the death penalty with safeguards. And I agree with Senator Flood, and I think he has made an incredibly important case for safeguards that are in place. And I think our committee, the Judiciary Committee, we struggled dearly with this issue, but I think on balance, certainly I and others in the committee felt that there were adequate safeguards in our death penalty statutes to protect the interests, the rights, the constitutional rights of the accused. For that reason and for the reason that I don't think that we have, we are reinstating the death penalty, we have a death penalty, and that we need to have a means of carrying it out. It's for that reason that I will vote to advance LB36. Thank you. [LB36]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Nantkes, you are recognized. [LB36]

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SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. Thank you, Senator Ashford for your thoughtful comments. Colleagues, I rise, in no surprise to anyone, in opposition to LB36 for a variety of reasons, policy, legal, technical, and otherwise, which we've discussed over the past, almost two days now. To be clear colleagues, I wanted to utilize this time on the mike not only to reiterate my opposition but to point out the fact that while I think there are additional points that can and should and will be made in regards to this issue and this piece of legislation. We're on General File. We have another round of debate to go through before we adjourn. And I can sense some fatigue amongst the body in terms of addressing some of these issues further at this point in time, and I think that reflection is helpful so that people like me and maybe other opponents can look at the record, can see where we're at, what has been created, what is lacking, and what needs to be injected therein as we move forward. So that being said, colleagues, I don't plan to speak again today in opposition to LB36. I think my issues in regards to opposition have been well declared at this stage of debate. And I anticipate that either...other senators, of course, can follow their own hearts and minds in regards to this issue at this stage of debate. But I plan down the road on Select File to have a real and true and honest discussion about the risks involved in inflicting substantial and grave harm on those who will face the method of execution as envisioned by LB36. Additionally to talk about issues surrounding architecture, retrofitting of prison facilities, and infrastructure in regards to changing this method, and a variety of other factors. That being said, I think that we'll have time on Select File to include those provisions in the record. And in deference to Senator Flood, who has conducted himself in a very professional manner in structuring this debate, I told him presession that I...and during predebate on this very issue, that filibuster was not on my mind, but that it would take a significant amount of time to build an appropriate record. I think I feel comfortable with where we are in that regard at this point in time, and will reserve the right to bring additional points for consideration into the record on Select File. Thank you, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Senator Nantkes. Senator Council, you're recognized. [LB36]

SENATOR COUNCIL: Yes, thank you, Mr. President. I certainly appreciate this opportunity to address LB36 as I concentrated my comments this morning on AM1452, which was the bill I introduced and the amendment that I filed. But turning to all of the discussion that occurred this morning around LB36, while the subject matter was AM1452, I cannot help but rise to raise another of the concerns that were not only expressed during the hearing on this bill but has been expressed on numerous occasions since and has been aptly addressed by some of my colleagues on the floor, including Senator Nantkes. You know, one of the things that absolutely, I think, must be addressed and recognized repeatedly, it has been said on this floor that LB36 mirrors the Kentucky statute that the U.S. Supreme Court found the lethal injection under that statute to be constitutional. First and foremost, this statute is not patterned exactly off of

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the Kentucky statute. If one were to read the Kentucky statute, it says, except as provided in paragraph (b) of this subsection, every death sentence shall be executed by a continuous intravenous injection of a substance or a combination of substances sufficient to cause death. The lethal injection shall continue until the prisoner is dead. Well, let's look at subparagraph (b). Prisoners who receive a death sentence prior to March 31, 1998, shall choose the method of execution described in subparagraph (a) of this subsection or the method of execution known as electrocution, which shall consist of passing through the prisoner's body a current of electricity as sufficient in intensity to cause death as quickly as possible. The application of the current shall continue until the prisoner is dead. If the prisoner refuses to make a choice at least 20 days before the scheduled execution, the method shall be by lethal injection. Ladies and gentlemen of this body, our statute is not patterned after the Kentucky statute. Kentucky still uses electrocution as a means of execution. We cannot use electrocution as a means of execution in this state and it's not by reason of a United States Supreme Court decision. It's by reason of an opinion of the Supreme Court of the state of Nebraska, that court's jurisdiction which is being ignored throughout this conversation. The reason we don't have electrocution, folks, isn't a U.S. Supreme Court ruling that it's unconstitutional, because they haven't. We don't have electrocution as a means of execution because our state Supreme Court said it violated our constitution. So we want to pattern this statute after Kentucky, throw in electrocution. It's not in there because our Supreme Court says you can't do it. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: And despite what the U.S. Supreme Court says in Baze, our state Supreme Court can very easily and very readily say, you can't do lethal injection. And when you look at the Baze decision, ladies and gentlemen, it's not this bare statute that the Supreme Court approved, it was their protocols under this statute. And if you read the decision and if you read it carefully and thoroughly, you will see that they didn't rule just on the fact that they said, we're going to administer a combination of substances sufficient to cause death, they examined each and every aspect of the Kentucky protocols to support this statute. I'd ask anyone in this body to tell me what our protocols are. [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR COUNCIL: And if you don't know, you can't say that this is constitutional. [LB36]

SENATOR CARLSON: Thank you, Senator Council. And your light is on. You are recognized to speak again. [LB36]

SENATOR COUNCIL: Thank you, Mr. President, because I want to make the record.

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Because I hold this up. This is tantamount to a defense bar's gift of a winning lottery ticket. That's what this amounts to. There are so many basis for challenge in this statute that we think it's been a long time since we've executed anyone under the former means that was found by our Supreme Court to be unconstitutional, hold your breath on this one. Because as Senator Nantkes pointed out, the question on competency, where is the due process in that? The statute says somebody at the Correctional Center can come to a conclusion that someone appears to be incompetent, can take that to a court, who then tells three people who we don't know how they're chosen, to make some examination that cannot be challenged until after it goes to the court, and once it goes to the court, believe me there will be an appeal. Believe me, there will be an appeal. Then we talk about the qualifications of the people administering these substances. You know, if you look at our statute, it says, a combination...one or a combination of substances. So according to our statute, we could rely on just one substance. That's not what the Supreme Court approved. The Supreme Court approved a specific administration of specifically named drugs in a specifically prescribed process. I don't know about you, but under LB36 I have not a clue what that is. I don't know if we're going to use one, I don't know if we're going to use three. And if you can't say definitively what that is, you can't stand before this body and say this law is constitutional. And again, if you look at the court's decision, one of the reasons they reached the decision that they reached, was when the case was first presented to the state court the Supreme Court went to great lengths to tell you that the state court created a record, an extensive record of findings of fact and conclusions of law with regard to every single step of their protocol. And that protocol has specific training requirements for the individuals who would be involved in administering this form of execution. And as I stated yesterday, Kentucky specifically prohibits a doctor from participating in this process. No physician shall be involved in the conduct of an execution except to certify a cause of death, provided that the condemned is declared dead by another person. LB36 doesn't say that. LB36 says we're going to wave a magic wand and if you do it, we're not going to call it the practice of medicine and we're not going to subject you to discipline by a state licensing board. But it doesn't say, we're going to protect you from a violation of the oath that is the fundamentals of the practice of medicine, thou shalt do no harm. We don't insulate anyone from that under LB36. We just say, we won't consider it medicine. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: Although if you use a physician in this process, I don't know what you'd call it, voodoo. But here we say it's not medicine. Kentucky, they use phlebotomists with specified years of training required. We talk about retrofitting. Have you seen how Kentucky does this? They have two rooms, two systems, backup systems. Do we have a backup system? Somebody point to me in LB36 where it says we have a backup system. That's what the U.S. Supreme Court ruled was constitutional. That's what they said wouldn't result in cruel and unusual punishment. I

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won't vote for LB36 simply because I oppose the death penalty. I won't vote for LB36 because it is bad law. [LB36]

SENATOR CARLSON: Time. Thank you, Senator Council. Senator Gloor, you're recognized. [LB36]

SENATOR GLOOR: Thank you, Mr. President. Am I the last person queued up, Mr. President? Not. Senator Council and I are on opposite sides of this issue. And I know nothing I can say will dissuade her from her feelings, nothing she can say at this point in time will dissuade me from my feelings. In the final analysis we're both concerned about death and life and life and death, and have a different view of that, but have that concern between the two of us. And having said that, out of a sign of respect for how well I feel she has carried her argument, how much it has made me think about my decisions, weigh my decisions, reassess my decisions, I would waive any further comments from me, but would yield my time to her if she would like to continue. [LB36]

SENATOR CARLSON: Senator Council, 3:50. [LB36]

SENATOR COUNCIL: Thank you very much, Senator Gloor. I appreciate that because my objective here today...you voted not to repeal the death penalty. That decision has been made. There's nothing I can do to alter that. But one thing I can do at this point in time is on LB36, is to point out the flaws in this bill. Someone earlier said it creates false hopes. That's exactly what it does. I mean we were talking this morning about the fact that we've had a death penalty on our books for a number of years and not until LB36 do we say, the warrant has to be, the execution has to be scheduled within 60 days of the issuance of the warrant. Senator Flood himself commented on that. That creates false hope. That creates the hope among the families of victims that if the trial court says that the death sentence shall be imposed after the three-judge panel decides it, that someone is going to be executed within 60 days. Folks, that's not going to happen. It's not going to happen. And if you look at the Kentucky statute, it doesn't say that. The Kentucky statute says that the court...in fact, in Kentucky the Governor sets the execution date and it doesn't state a specific period of time. But we have gone to great lengths, every time we talk about the death warrant, saying it has to be, that the execution has to occur within 60 days of that date when we know good and well that's not going to happen under our system of judicial review. Makes people feel good but if you're talking about the pain and trauma that you put families through, you know, you're going...somebody is going to pick this up and say, within 60 days that's going to happen. And we know good and well it's not. That is not how it's going to occur. Again, when we look at the Baze decision, and someone stated this morning and that's true, the U.S. Supreme Court has never declared any state's method of execution unconstitutional. That's a fact. The state Supreme Courts have declared their own methods of execution unconstitutional. And when we talk about these protocols, how many occasions did former Senator Chambers challenge the electrocution protocols

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and prevailed. And each one... [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: ...of those challenges would lead to a judicial appeal, because every time they were changed they gave grounds for someone to appeal. I think this body should be open. I mean, if you want to model Kentucky, put it in your statute. If you want to set out what the protocol...if you want to know what the protocols are, set them out. The Supreme Court in Baze said, we don't find any reason to require Kentucky to use one drug. If we want to follow the Supreme Court, why does our law say, one or any combination. If we're concerned about it passing judicial scrutiny, the Supreme Court has already ruled in this case that one drug may or may not be constitutional. It wasn't constitutional in this case. [LB36]

SENATOR CARLSON: Time. [LB36]

SENATOR COUNCIL: I think I'm next. [LB36]

SENATOR CARLSON: Thank you, Senator Council and Senator Gloor. Senator Council, you're recognized and this is your third time. [LB36]

SENATOR COUNCIL: Thank you, Mr. President. Again in the Baze case, the petitioners there, these two death row inmates, who no one in this room would embrace them in any fashion. They committed double murders, both of them. But their argument was, why doesn't the state of Kentucky use a one-drug protocol instead of a three-drug protocol. Because the risk of harm associated with a three-drug protocol, in their opinion, was more substantial than the risk of harm and unnecessary pain of a one-drug protocol. And you know what the Supreme Court said? The Supreme Court said there may be occasions, there may be situations where a one-drug protocol is the more appropriate means of carrying out an execution. But we can't say that's the case in this case before us, because all they said was that these defendants, these death row inmates didn't present enough evidence to show that the three-drug protocol would cause a substantial risk of harm. Here we're talking about protocols. Here, meaning the U.S. Supreme Court. They're talking about protocols. LB36 talks about outline. They're no protocols. That's left to the Corrections Department and no disrespect to our Corrections Department, none intended whatsoever. But think about it. This morning we kept hearing about the horrible case of David Dunster. Now, relying on our Correctional Department and as Senator Wightman so correctly pointed out this morning, common sense, if I'm having shipped to me an inmate who has already committed two homicides, one of them he committed while he was serving time in a Montana prison, incarcerated, why would I house that person with someone else? Common sense tells me if he killed his last roommate, the chances are pretty good that this guy doesn't play well with others. But it's worse than that. This guy told the correctional officials that he

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didn't play well with others. He begged them to get this guy out of the cell with him. He told them, this guy bugs me so bad if you don't get him out of my cell, I'm probably going to kill him. Well, he did. Do I share that with you to condone that (inaudible) but I know someone will twist it that way. The point I'm making is, when we're talking about these protocols that we're comfortable leaving the development to our correctional officials, when we had to change the electrocution protocols they developed on more than one occasion, and rest assured until you know what it is, you're probably going to have to change them under this statute. [LB36]

SENATOR CARLSON: One minute. [LB36]

SENATOR COUNCIL: And I'm just trying to convince this body, please don't pass a piece of legislation that just throws the doors of the courthouse open. You think you haven't seen an execution since 1998, it will be a long time, long time before you see an execution, if ever, under LB36. And with that, I would urge you to not advance LB36. [LB36]

SENATOR CARLSON: Thank you, Senator Council. There are no other lights on. Senator Flood, you're recognized to close on LB36. [LB36]

SPEAKER FLOOD: Thank you, Mr. President and members. Every year that I've been down here that this debate has been on the floor, it has been one of the best discussions about state policy in Nebraska. To those that oppose this bill, you have my respect. You've done your homework. You've made valid points as they pertain to your position. This is a significant issue. It's a significant vote. Let me walk you through briefly how we got here. The Nebraska Supreme Court, as Senator Council said, ruled that our electric chair was unconstitutional. She's right. They did that under our state Constitution, the Constitution of Nebraska. And as I said before, I wasn't ready to come back to the Legislature with a new method of execution until I knew what they did in Kentucky was okay. The Kentucky statute, and I'm talking about the statute, does not identify a three-drug protocol. It says substance or substances. The way we put together LB36 was modeled after what they did in Kentucky. The fact that they have two methods, well, we can't have the electric chair in Nebraska. And I didn't think it was appropriate to have options in this bill. Some of you in here have asked about other options. That's for another day, maybe another Legislature. But to the idea that you are throwing the doors to the courthouse wide open with this bill, I say they should be wide open. We're talking about taking an offenders life. And the courthouse doors should be open to accept those appeals, because this is a two-pronged plan. Number one, we adopt the statutory language, and number two, the Department of Corrections through the APA guidelines and statutory requirements adopt a protocol. The U.S. Supreme Court was looking at the protocol adopted administratively in the state of Kentucky. That too will happen in Nebraska. It's not appropriate from where I sit to mandate the specifics of three drugs. That is and should be reserved to the Department of

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Corrections to go through the appropriate process. And you know what, it should be challenged, and it will. This is the most significant state action Nebraska can take in terms of a criminal sanction. I just want to say there's been a lot of things said on this floor and I think a record has been made on both sides. I'm going to bring it back to the fact, three men in the town I live in and a county that I live in were sentenced to die. It wasn't done on a whim. It was done after the evidence was presented, after the defense had a chance to cross-examine the witnesses to rebut the evidence. It was done after a jury sorted through the evidence. It was done after an aggravation hearing, after a chance for the defense counsel to present mitigators, after a three-judge panel conducted a proportionality review, after a three-judge panel unanimously in each one of those cases decided that death was the appropriate sentence, and to some extent as the appeals have started since the date of the convictions, the appeals process has moved forward. We have a good system in Nebraska. [LB36]

SENATOR CARLSON: One minute. [LB36]

SPEAKER FLOOD: There's a reason only 11 people are on death row and that is because the bar is awfully high to secure a death sentence in this state, and it should be. But to those who have been convicted of first-degree murder and sentenced to death, the sentence should be carried out. And that's what I ask you in my final moments today. If you...it's understandable to have questions about the death penalty, but this bill is not about should we have a death penalty. It's about the fact that we do have a death penalty. We don't have a method. We do have a death penalty on our books and in State v. Mata the Supreme Court said that the individual conviction at issue is proper and the sentence of death remained valid until a constitutionally acceptable method of carrying out the sentence was available. That's what we're doing today. We're making the method available. Thank you, Mr. President. I urge you to vote for LB36. [LB36]

SENATOR CARLSON: Thank you, Speaker Flood. You've heard the closing on the advancement of LB36 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? A record vote has been requested. Record, Mr. Clerk. [LB36]

CLERK: (Record vote read, Legislative Journal page 1601.) 34 ayes, 7 nays, 6 present and not voting, Mr. President. [LB36]

SENATOR CARLSON: Thank you, Mr. Clerk. LB36 does advance. Mr. Clerk, for an announcement. [LB36]

CLERK: I have nothing at this time, Mr. President. []

SENATOR CARLSON: Next item. []

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CLERK: Mr. President, LB561 on Select File. Senator Nordquist, I have Enrollment and Review amendments. (ER8126, Legislative Journal page 1388.) [LB561]

PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB561]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB561. [LB561]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB561 advances. The amendments are adopted. [LB561]

CLERK: Mr. President, Senator Langemeier had FA37, but I have a note he wishes to withdraw. [LB561]

PRESIDENT SHEEHY: FA37 is withdrawn. [LB561]

CLERK: Senator Langemeier would move to amend AM1454. (Legislative Journal page 1579.) [LB561]

PRESIDENT SHEEHY: Senator Langemeier, your...Senator McCoy, you're recognized to open on AM1454. [LB561]

SENATOR McCOY: Thank you, Mr. President and members of the body. AM1454 came to be known as the Tenaska amendment, which amended now is the Langemeier amendment. As amended this garners the support of the interested parties in this matter. Over the last five months, Senator Langemeier and myself and the members of the Natural Resources Committee have learned a tremendous amount about C-BED, which, of course, is Community-Based Economic Development wind energy. And what are the fundamentals of C-BED? One is Nebraska ownership, at least one qualified Nebraska owner. Two is that 33 percent of the project revenue produced benefits Nebraskans through leased payments for towers, local taxes, Nebraska ownership payments, and others. Now, how do we reach these fundamental goals? There are as many models as your imagination can create and name. The most talked about method is the Minnesota flip. And this is not a new financing tool. The flip model has been used for many years in the development of residential and commercial development and it works if you can find all the participants. And again, the flip model is just one effective model. The 33 percent qualified ownership model has been used at the Elkhorn Ridge. Wind Farm at Bloomfield is yet a second model. And this one focuses on that 33 percent of the project is owned by Nebraska qualified owners for the life of the project. This model achieves also the fundamental goals of C-BED. AM1454 allows debt

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financing to be leveraged at the project level if you are using the 33 percent qualified ownership model or a model with a higher level of Nebraska qualified ownership. AM1454 preserves the goals of C-BED by ensuring the 33 percent of the power purchase agreement benefits Nebraskans. And benefiting Nebraskans was the primary intent of the creators of C-BED and is the priority of Senator Langemeier and of myself. The question might be, so if it works, why change it? First, the 33 percent qualified ownership model is cash intensive. By adopting AM1454 you will aid in the development of more wind projects in Nebraska by making the needed capital available. This will aid in meeting the goals of NPPD and OPPD as they work towards having 10 percent of their portfolio provided by renewable energy sources. Second, with proper financing tools the cost of wind power will be less. NPPD was founded on the idea of least cost for reliable power delivered to Nebraskans and that's why we need AM1454. A second question might be, what about the big wind study our Natural Resources Committee will be working on this summer? And yes, this issue as well as all of the underlying bill LB561 will be part of the big study. And that's why we have a sunset for the provisions of AM1454 on December 31, 2011. This amendment is a responsible step forward, colleagues, while also remaining very cautious as we go forward with wind development in our state. And I would ask for your support of AM1454, the Langemeier amendment. Thank you, Mr. President. [LB561]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You've heard the opening of AM1454 to LB561. Members requesting to speak are Senator Haar. Senator Haar, you're recognized. [LB561]

SENATOR HAAR: Mr. President and members of the body, AM1454 has gone back and forth and back and forth and I think we've reached an agreement now and an accommodation that has everybody sort of happy. And so I fully support AM1454 and LB561. The study that the Natural Resources Committee will undertake this fall, this summer and this fall, I believe we'll revisit C-BED. There's still kind of some fuzzy areas in my opinion in the law. But C-BED properly used, as we've seen from Minnesota, can give a maximum amount of economic development for rural Nebraska. So I'm very excited that we have LB561 and AM1454. Part of the compromise was to put a sunset clause in it at two years so that just in case we haven't gotten C-BED just right it will sunset and we can come at it again. So I would urge everyone to support LB561 and AM1454. I think it moves us forward in wind development and as the...sort of the groove from Minnesota has talked about. Wind is a cash crop and this will help us combine that wind. So thank you very much. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Haar. Further members wishing to speak, Senator Lathrop, followed by Senator Schilz and Senator Dierks. Senator Lathrop, you're recognized. [LB561]

SENATOR LATHROP: Thank you, Mr. President. I want...first of all, I stand in full

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support of AM1454 and I want to compliment Senator Langemeier on his compromise. And I don't know if it's a compromise or just the recognition that if he stayed after it long enough, he found a way to accommodate the interests of the C-BED group as well as those who can develop wind energy in the state of Nebraska on a larger scale. This is a significant achievement and my hats off to Senator Langemeier and the Natural Resources Committee. That having been said, I think I want to take a minute to go back two years when I carried the bill for C-BED and it was something that Senator Dierks brought to us and we had a number of meetings. I'm going to talk a little bit about the past, if I can. Senator Preister was here and Senator Dierks had this idea that we could develop wind energy in the state and make it work. And I went to a number of meetings and when we went to those meetings, we would meet with some of the utility people and they'd say stuff like, well, we think that's really good but we need to study it a few more years. And it really was the efforts of Senator Dierks and Preister, and I think Senator Dubas as well, that pushed us into wind energy and opened a lot of eyes. It was the beginning of the development of wind energy and I just want to publicly thank Senator Dierks for his efforts with getting C-BED through, and Senator Langemeier for his AM1454 which is an accommodation to C-BED, which is good for the state of Nebraska in not only developing wind energy but also keeping a good deal of the economic development piece in place. Thank you. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Schilz, you're recognized. [LB561]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I guess I'd just like to comment a little bit on how far it seems we've come in such a short time. We've seen a net metering bill go through. We're getting ready, I hope, to amend LB561 with AM1454, which I'm in support of. I think that, I think that we've moved a long ways in a short period of time. I think we should be commended for that. But this is the type of legislation that will enable economic development in western Nebraska. And it's economic development that we need very, very badly. My district is...almost every community there save one is losing population every year. The school numbers are down. We're losing population. We need to find some way to turn this around. Wind development, wind energy development, alternative energy development in western Nebraska can be that economic development that we're looking for. It won't be everything, but it's sure a step in the right direction. So I wholeheartedly support this bill, wholeheartedly support the amendment, and I hope everyone else will step aboard as well. Thank you. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Schilz. Senator Dierks, followed by Senator Carlson. Senator Dierks, you're recognized. [LB561]

SENATOR DIERKS: Thank you, Mr. President. I'm going to support the amendment. I'm still thinking about the bill but I just want to thank some people who did extraordinary

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work on this amendment because I objected from the very beginning the way it was handled. And it turns out that we've done pretty well with it. And I want to thank Senator Haar because he was one of the guys that kept me posted on what was happening, and I also have to thank Senator Langemeier because I think he really had the best interest of what I have in mind in his heart as well. This is a bill that tackles part of what we did with C-BED. C-BED was that, the beginning legislation to provide for energy based, community-based energy development, an ideal situation for economic development in rural Nebraska. It gives farmers and ranchers the opportunity to have an investment in something that will help keep them on the farm, because we're not getting a whole lot of support from corporate America today to keep farmers and ranchers on their property. We've got to have something for them to supplement their income. And we did the original C-BED thing up at Bloomfield a couple of years ago. And at that groundbreaking it was in the public school in Bloomfield gymnasium that a number of people came to talk and the press was there. And afterwards we sat around and had some refreshments and one of the young members of the community came up to me and he said, Senator Dierks, I just want to thank you for this legislation. He said, I know that it's going to help me individually as a farmer and, a young farmer in Cedar County, and I'm going to have one of these on my property. And I think that's what we were about. That's what we were trying to do is provide a way for these farmers who have difficulty handling the cost of seed, the cost of fertilizer, the cost of production, and not have an awful lot of support in getting paid for their product, this gives them an added income, helps to keep some of these guys on the farm, and ladies as well. And so I'm pleased with what we've done. I'm glad that we got the sunset put on this because I think that is essential that we make sure we're on the right path. I hope that we are. With that, I just want to urge your support of AM1454. Thank you. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Carlson, you're recognized. [LB561]

SENATOR CARLSON: Mr. President and members of the Legislature. This is my third year serving on the Natural Resources Committee and I've observed and experienced a lot of study and discussion concerning wind energy over these three years. Pertaining to AM1454 I was one of the committee who initially blocked it from coming out of committee. I was afraid it might not be fair to our C-BED law and those interested in developing C-BEDs. But with federal law there is an issue with the urgency of action and timing of legislation. And the sunset provision of December 31, 2011, gives an opportunity to see what kind of activity this generates for Nebraska ownership and for economic development. And the sunset provision allows me to support the amendment and I would ask for your support on AM1454 and the underlying bill LB561. Thank you. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Fischer, you're recognized. [LB561]

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SENATOR FISCHER: Thank you, Mr. President and members. As a member of the Natural Resources Committee I would just like to echo the sentiments of what my fellow committee members have already said on this amendment. We worked hard on wind energy this year. We worked hard to come together with consensus on a number of issues before our committee this year and we were able to achieve that in this amendment. Wind energy has tremendous potential for this state. I believe that this amendment will provide other options for people in the development of wind energy, not just for individuals but also for businesses. And hopefully, it will allow us to move forward and take advantage of this great resource that we have here in Nebraska. I would like to thank Senator Langemeier for working hard to bring all parties together with a consensus so we can move forward in order to harness this important resource. Thank you, Mr. President. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Wallman, you're recognized. [LB561]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, members of the body. I used to be on Natural Resources also and I know how tough that is to get public and private together to get resource money. And I thank Senator Langemeier for this, and Senator Haar, and I will support this amendment and the bill. As we know it's windy outside today and I think all the free energy we can get, we need. Thank you, Mr. President. [LB561]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Seeing no additional requests to speak, Senator McCoy, you're recognized to close on AM1454. Senator McCoy waives closing. The question for the body is on the adoption of AM1454 to LB561. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB561]

CLERK: 38 ayes, 0 nays, on the adoption of the amendment, Mr. President. [LB561]

PRESIDENT SHEEHY: AM1454 is adopted. [LB561]

CLERK: I have nothing further on the bill. [LB561]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB561]

SENATOR NORDQUIST: Mr. President, I move LB561 to E&R for engrossing. [LB561]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB561 advances. We will now proceed to LB288. [LB561 LB288]

CLERK: LB288, Senator, I have E&R amendments first of all. (ER8118, Legislature

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Journal page 1325.) [LB288]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB288]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB288. [LB288]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Amendments are adopted. [LB288]

CLERK: Mr. President, the next amendment I have is Senator Gloor, AM1280. But I have a note you want to withdraw that, Senator. [LB288]

PRESIDENT SHEEHY: AM1280 is withdrawn. [LB288]

CLERK: Next amendment, Mr. President. Senator Stuthman, AM1278. (Legislative Journal 1324.) [LB288]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on AM1278 to LB288. [LB288]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. AM1278 represents the provisions of LB199 as amended and advanced by the Judiciary Committee. This bill was requested by the Department of Health and Human Services and deals with various sections of statute relating to child support and medical support payments. This bill is required in part because of new federal mandates. In order to avoid a loss of federal funds the amendment also results in General Fund savings. The amendment does the following. I'm having the pages pass out a letter of the federal requirements and this letter was given to the Department of Health and Human Services and it came from the regional program manager of child support and enforcement policies. It amends the new higher reporting act to add independent contractor to the definition of employee. This change would allow for the reporting of individuals that take new employment as independent contractors and have child support obligations. Once these individuals are identified, an income withholding notice can be generated to their employer, and child support can be collected from each paycheck. The amendment allows for the continuous submittal of past due support amounts to the Department of Revenue. Under current law, the information is reported once yearly. The amendment provides that the interest on spousal support and medical support payments accrue after a 30-day grace period rather than beginning the day after it is due. The 30-day grace period brings spousal and medical support interest accrual into confirmation with how interest is accrued in child support cases. The amendment provides that only the support payments that become due during the time period in which the individual receives public assistance is assignable to the state. This

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change is needed to comply with the federal mandate. Currently, an individual applying for and accepting public assistance assigns all court ordered child, spousal, or other support or arrears and any additional support that becomes due while receiving public assistance to the state. The amendment addresses a federal requirement relating to establishing and enforcing medical support obligations. The amendment says that the court has to require that healthcare coverage be provided by the party ordered to pay medical support if the coverage is available to the responsible party at a reasonable cost. The amendment says that healthcare coverage is accessible if the covered children can obtain services from a planned provider with reasonable effort by the custodial party. The standard for accessibility to healthcare coverage in the amendment is 30 miles or 30 minutes. The administrative agency, court, or tribunal can recognize longer travel times where necessary in rural areas of the state because of the fact that it may be farther to get medical assistance than the 30 miles in the outlying rural areas. In primary care services, if the primary care services are not available within those constraints, the healthcare coverage is presumable inaccessible. If healthcare coverage is inaccessible and one or more of the parties are receiving title IV-D services, then cash medical support must be ordered. Cash medical support or cost of private health insurance coverage is considered reasonable if it does not exceed 3 percent of the responsible party's growth income. Cash medical support payments can't be ordered if it would reduce the responsible party's net income below the basic subsistence limitations provided in the Nebraska child support guidelines. If the guidelines don't describe a basic subsistence limitation, then cash medical support payments can't be ordered if it reduces the responsible party's net income below \$903 or below the federal poverty guidelines. I want to talk a little bit about the reasons, the reasons why we need to pass this. Because of this assignment in medical support sections above our federally mandated, failure to pass these sections as part of LB288 will result in the loss of all federal IV-D funding. In federal fiscal year of 2008, which was last year, Nebraska received federal match dollars of \$29,101,445. A portion of this federal match is shared with the state treasurer, the state disbursement unit, clerks of the district court, county attorneys, and the Nebraska Supreme Court. Nebraska also anticipates receiving federal incentive money amounting to approximately \$3.5 million of the federal, for the federal year of, no, the fiscal year of 2008. In the letter that I had passed out by the pages, I would also like to draw your attention to the fact on page 2 where I have the plan identified, because Nebraska is proceeding to amend the state law in order to meet the revised medical support federal regulatory requirements, it appears that Nebraska's proposed legislation in LB199 meets the requirement of the revised federal mandate regulations. I also want to talk a little bit about the fact that if we do not pass this bill, and it is late in the session but it is a fact that we've been working on this bill, you know, and trying to get the agreement so that we could get this bill in a working order, in agreements with Health and Human Services. Now, if we do not pass this and a determination of the state IV-D plan is disapproved will result in the immediate suspension of all federal payments for child support enforcement programs. Such payments will continue to be withheld until we pass a plan. And this is a plan and this is

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the plan that has been accepted. And I think that everything is fairly well addressed in this plan. We've got an agreement between the bar association and Health and Human Services and I think this amendment of AM1278 is a good amendment and I would request that we support this amendment and that we pass this amendment. Thank you, Mr. President. [LB288 LB199]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You've heard the opening of AM1278 to LB288. Members requesting to speak, Senator Gay, followed by Senator Heidemann and Senator Ashford. Senator Gay, you're recognized. [LB288]

SENATOR GAY: Thank you, Mr. President. I just wanted to rise in support of the amendment. As Senator Stuthman clarified, this is a...something we need to take care of by October. It's a clarification on the child support enforcement and some of the medical, how that relates to medical. It got through the Judiciary Committee and Senator Stuthman steered it through there. Some compromises were made, but there will be a change when we get to the A bill. There's a little savings there actually so we're going to talk on the A bill, but it doesn't really have a substantial fiscal impact on revenue at all. We're saving money. Long-term though, this is a substantial...we need to do this. This allows for better enforcement and we can go collect more that would go to families and children who need these support payments. So the bill is necessary. It's something that was brought later and it was being worked on and clarified and it was brought to our attention. It's been to our attention but this was a good vehicle to attach it to and needs to be done. So I'd urge your support of the amendment, and I'd yield any time if Senator Stuthman would like it. [LB288]

PRESIDENT SHEEHY: Senator Stuthman, you're yielded 3:40. [LB288]

SENATOR STUTHMAN: Thank you, thank you, Mr. President. And thank you, Senator Gay. I just feel that there has been a lot of concern about child support collection and what this does. The main emphasis that I have, and it's a real concern of mine, is the fact that these children, you know, are due what the court has ordered for them because of a situation of the divorce or what has ever happened. Maybe not a divorce, but a responsible party not addressing the needs of the child. I think this will secure money for those children which is definitely due them. Also there is the situation of medical payments. There's got to be insurance for these. This has to be addressed. And I think it's pretty well covered in this amendment. One other thing that I think is a very, very good thing is we a lot of times hear of individuals that are not getting any child support money, and the fact is the one that is responsible for the child support money is probably an independent contractor and there's no method of securing fund or withholding it. But since we addressed that right now and if an independent contractor works on a project where there is an employer, it is the responsibility of that employer, you know, to make sure that there is money withheld from this independent contractor that is doing a specialized job on the site of a probably larger operation. So I think this

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addresses all of those situations. And in my opinion, we're attempting to get the money to these children and help out with their education and with their health. So with that, Mr. President, thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Thank you, Senator Gay. Senator Heidemann, you're recognized. [LB288]

SENATOR HEIDEMANN: Lieutenant Governor and fellow members of the body. Just very briefly, this is something that came to my attention and I do want to rise in support of AM1278 to LB288. This is something that probably, in my opinion, probably should have come before this body a little bit sooner, but it has and I do commend the work of Senator Stuthman on this. But if we do adopt this amendment it will be a savings to the state in General Funds. It is not a large amount but it's something that we need to do on that part. But not only that, if we do not adopt this amendment, it could jeopardize quite amount of federal funds. And because of that, I do urge your adoption of AM1278 to LB288. Thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Ashford, you're recognized. [LB288]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I have very little to say. Senator Stuthman has clearly outlined what he is doing in this amendment. The committee unanimously supported his efforts here, and I'm glad we found a vehicle, and I urge the adoption. Thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Seeing no additional requests to speak, Senator Stuthman, you're recognized to close. [LB288]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I do apologize for the fact that this bill, this amendment, LB199, you know, didn't come before the body any sooner than now. But there were some difficulties. There were some situations that we had to get ironed out and we did get those all ironed out and hopefully we feel that we've got it in a workable situation and in a workable form. So I do respect the fact that yes, this is something that probably should have been addressed a month ago, but it's never too late because we are addressing it right now. And I think, hopefully, I can get the support to get this moved on because this is needed. This bill, this amendment is needed so that we can get some of this child support enforcement and address the federal mandates of it so that it will all fall into place, and we continue to get the funding from the federal government. Also there is a little bit of a cost savings to the state of Nebraska so there is really no A bill. Yes, there is an A bill, but it is a positive A bill. So with that I ask for your support of this amendment. Thank you, Mr. Lieutenant Governor. [LB288 LB199]

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PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the closing. The question before the body is on the adoption of AM1278 to LB288. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB288]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Stuthman's amendment. [LB288]

PRESIDENT SHEEHY: AM1278 is adopted. [LB288]

CLERK: Senator Pirsch would move to amend AM1428. (Legislative Journal page 1576.) [LB288]

PRESIDENT SHEEHY: Senator Pirsch, you're recognized to open on AM1428. [LB288]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. This amendment deals with child support modification. That's the issue. A little background. As we all know, court's can order noncustodial parents to pay child support to be used for the child's maintenance and food and what not. Once a judge orders that child support and would set a monthly amount based on the individual circumstances of the case, that amount once set by the judge can only be...the person paying that child support can only come back to court, attempt to modify or change that level of child support only under certain circumstances, only when certain conditions have occurred. And the courts have called that, giving it a title, change in circumstances. That's kind of the legal terminology. And actually I had a case back in law school went up to Supreme Court that involved that very issue. So this is something that has been looked at for a long time. The long...for time immemorial actually because modifying child support is thought to be an equitable action. You have to come to courts of equity with clean hands and so, for a long time those who committed crimes went to jail as a result of their deciding to commit crimes and then as their child support kind of piled up as they sat in jail, could not, were not allowed to petition the courts to have their child support lowered during that time period that they were in jail. They were thought to, they were the one who decided to put the gun to the teller's head, you'll have to deal with the child support as it piles up. Well, however, there was a feeling a couple of years back in 2007 that this was, among some senators, that this was an unfair event for prisoners to find themselves in, no matter whether or not they caused it or not, that their child support was piling up and that in terms of rehabilitation it was not helping them out when they went back and reintegrate into society. And so there was a bill that was passed or put forward and passed a couple of years ago that said essentially that if you did go to jail, that was a good valid reason to approach a judge and have your child support modified or changed to a lower amount to accommodate your new reduced earning capacity. Well, you know, I fought that fight two years ago on the floor and lost fair and square. And I'm not here today trying to kind of overturn that decision. This amendment doesn't seek to do that. What we're looking at here today is just a much narrower exception. An

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amendment tries to carve out a...I think what would be an unintended result of that bill that was passed, one, that I think we all agree leads to a bad outcome for children and I don't think that that's why anybody did it two years ago. This amendment essentially says, for those criminals who go to jail because they sexually or physically abused the child who is the very subject of the child support order. In those limited cases it would be very wrong to allow those individuals, those prisoners to get a child support lowering because of those circumstances. And so that's what this bill does. I think it plugs that loophole and says, if the reason you went to jail is because you sexually assaulted or physically abused the child who is the very subject of your child support, you can't piggyback on that and have your child support lowered to that very child as a result. In essence, victimizing the child once again. And so in this limited exception I don't think will prove too controversial, I would ask for your support. Thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the opening of AM1428 to LB288. Members wishing to speak are Senator Wightman, followed by Senator Howard. Senator Wightman, you're recognized. [LB288]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the Legislature. The bill that Senator Pirsch seeks to amend here was my bill two years ago. It was brought at the request of another legislator and it was passed. I think Senator Pirsch's amendment, AM1428 is perfectly logical. In the event that the person is incarcerated, the one who has been ordered to pay child support previously is incarcerated for the abuse of his own child, it seems to me he should not be able to take advantage of the original intent of the act, which was to consider the change of circumstances. So I do stand in support of AM1428 and urge your support for that. Thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Howard, you're recognized. [LB288]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I too rise in support of Senator Pirsch's amendment to LB288. Any child who has been victimized by an individual who is responsible for them, a parent, a guardian, certainly shouldn't be victimized twice by having that individual forgiven for any child support that would be due to that child by their very act of abusing the child. I thank Senator Pirsch for bringing us this amendment and certainly any individual that violates a child should not be forgiven, forgiven an obligation due to that fact. Thank you. [LB288]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Wallman, you're recognized. [LB288]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. Thank you, Senator Pirsch for bringing for the children, and I urge you to vote green on this. And I'll thank you, Mr. President. [LB288]

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PRESIDENT SHEEHY: Thank you, Senator Wallman. Seeing no additional requests to speak, Senator Pirsch, you're recognized to close. Senator Pirsch waives closing. The question for the body is on the adoption of AM1428 to LB288. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB288]

CLERK: 38 ayes, 0 nays, on the adoption of Senator Pirsch's amendment. [LB288]

PRESIDENT SHEEHY: AM1428 is adopted. [LB288]

CLERK: I have nothing further on the bill. [LB288]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB288]

SENATOR NORDQUIST: Mr. President, I move LB288 to E&R for engrossing. [LB288]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB288 advances. We'll proceed to LB288A. [LB288 LB288A]

CLERK: Mr. President, LB288A. No E&Rs. Senator Gay, I have AM1368, Senator, with a note you want to withdraw AM1368. [LB288A]

SENATOR PIRSCH: Yes. [LB288A]

PRESIDENT SHEEHY: AM1368 is withdrawn. [LB288A]

CLERK: Senator Gay would move to amend with AM1456, Mr. President. (Legislative Journal page 1602.) [LB288A]

PRESIDENT SHEEHY: Senator Gay, you're recognized to open on AM1456. [LB288A]

SENATOR GAY: Thank you, Mr. President. As I discussed earlier on Senator Stuthman's bill, it would change the fiscal note a little bit. What...this is still savings. We're going from savings of \$541,000 General Funds to \$274,000 in fiscal year 2010, and \$232,000 in fiscal year 2011, and that's due to some enforcement and what we have to do to get that to be in compliance. There's still...long-term, the savings is substantial and the collections will increase estimated up to \$6 million. So the amendment replaces with the updated fiscal note to include Senator Stuthman's amendment. [LB288A]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the opening of AM1456 to LB288A. Seeing not request to speak, Senator Gay, you're recognized to close. Senator Gay waives closing. The question before the body is on the adoption of

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AM1456 to LB288A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB288A]

CLERK: 40 ayes, 0 nays, Mr. President, on the adoption of Senator Gay's amendment. [LB288A]

PRESIDENT SHEEHY: AM1456 is adopted. [LB288A]

CLERK: I have nothing further on the bill, Mr. President. [LB288A]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB288A]

SENATOR NORDQUIST: Mr. President, I move LB288A to E&R for engrossing. [LB288A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB288A advances. We will now proceed to legislative bill...Mr. Clerk, do you have items for the record. [LB288A]

CLERK: Just two items, Mr. President, thank you. Appointment letters from the Governor, appointments to the Community Corrections Council will be referred to Reference. That's all I have, Mr. President. (Legislative Journal pages 1603-1604.) []

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now proceed to LB16. [LB16]

CLERK: LB16. Senator, I have E&R amendments, first of all. (ER8110, Legislative Journal page 1325.) [LB16]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB16]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB16. [LB16]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed, nay. Amendments are adopted. [LB16]

CLERK: Senator Friend, would move to amend with AM1431. (Legislative Journal page 1499.) [LB16]

PRESIDENT SHEEHY: Senator Friend, you're recognized to open on AM1431 to LB16. [LB16]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. A week and a half ago I got a chance to actually talk to Senator White about this, I wouldn't say

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in passing. We talked a little bit about it about a week and a half ago. This bill moved off of General File. I saw some of the debate. Was not involved in any of the debate but I've been keeping close tabs on it and here's my thought process now at this point. In the spirit of full disclosure, I have talked to the Treasurer's Office about this idea. As a matter of fact, I've been talking to the Treasurer's Office and I would say for probably the last two, three, four weeks. Let's start with the amendment and let's start with why...and the reasons that I'm bringing it. If you look at the original bill, it's the establishment of a Web site and it's going to be known as and cited as the Taxpayer Transparency Act. Well, here's what the amendment does. First of all, it strikes the entire bill and moves the language over to Section 84-602. Now, Section 84-602 are the duties of the State Treasurer. That's it. The bill does everything...I didn't touch anything else. Now, let's get to the reasons. I think this is a pretty decent bill and I told Senator White that, I think on two occasions. I think that we can move forward with this but I think Senator White and I, and maybe others out on this floor, we'll hear from, we'll hear from you guys obviously...have different ideas about where this should be managed, where this particular Web site should be managed. Here are my reasons, duplicity, cost and expertise, experience and also duties, fundamental duties. Let me start with the duties for a second. We've got some 80 pages in our constitution. If you go in and try to flag down legislative power, I think it's on page...starts on page 8, probably ends somewhere around, I don't know, close to page 17. No, actually closer to page 19. The really only clear-cut thing in our constitution that tells us, as a Legislature, what we should do, and I've said this over and over again, we've already done it. You know what that is? It's the budget. The Legislature is to appropriate funds. According to the constitution the legislative authority of the state shall be vested in a Legislature consisting of one Chamber. I have issues with that, but that's not for this discussion. People reserve for themselves the power to propose laws and amendments. We all know that one. We appropriate money. Statutorily, statutorily, here's what it says. "Section 50-128, Legislature making appropriations, beginning in 1987 the Legislature shall make appropriations for the expenses of state government during the regular session held in odd-number" years, or excuse me, "in odd-number year for the biennium beginning July 1 of such year and ending June 30 of the next succeeding odd-number year." This bill in its original form also handed the duties of creating this transparency and creating this Web site handed it to the Exec Board. If you go to Section 50-401.01 and you look at the Legislative Council Exec Board members selection and powers and duties show me in there, please, someone, because I've read it countless times, somebody in there please show me where it says that the duty of that Executive Board is to provide that type of transparency to create that type of Web site or to give that back, that information back to the public. The Legislative Council and the Executive Board are internal functions. Let's talk about what the Treasurer's job is. I'm paraphrasing: Under 84-602, which is where I want to move this language to--I'm paraphrasing--"To keep a just, true, and comprehensive account of all money received and disbursed;" Let me repeat that. "To keep a just, true, and comprehensive account of all money received and disbursed;" Now, who better to report that to the people? Also,

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"To keep a just account with each fund, and each head of appropriation made by law, and the warrants drawn against them." It also says that they have to report on the condition of the treasury, they provide information to the Legislature, there's transitional duties. And I think this should be another duty; I'll amplify a little bit later if I get the opportunity. Another thing that I brought up was duplicity. Nobody ran out and told--at least I don't think--the State Treasurer or his office to create a Web site. But if you go to www.Nebraskaspending.com, you'll find one and you'll also find some pretty darn good information. Now if you take us out of this cocoon and this vacuum, and sometimes...and I see all the cameras went away because this isn't a very sexy topic. It's certainly not as important as the topic that we dealt with the last two days, I understand that, but it's important. And if you take us outside of this cocoon or this vacuum and you explain to people, oh, by the way, we're creating another Web site and it's for transparency purposes, and they just happen to know off the top of their head that there is a Web site out there for transparency purposes, their reaction might be what? That's a good idea and maybe they can compete against each other or get better information. More information is better, right? Maybe you'll get that reaction. Here's the reaction I've gotten: What are you guys, nuts? This is the problem with government. You've got a Web site that's functional and you decide you want to compete against that Web site and make something else that's just as functional or more functional? Why? For what reason would you want to do that? And you know what? I can't give them an answer. Well, I don't know, some of it might be political. Some of it might be that we think we can do it better. Some of it might be that we think it's our job. Sorry, I don't know. Go talk to your state senator. Quite frankly, I don't have a good answer for them. Now let's move on a little bit: the cost and the expertise. It costs about what? Forty-thousand dollars a year, I think was the...or excuse me. The up-front cost to actually create www.Nebraskaspending.com was about \$40,000, and I think they approximate \$1,500 a month to actually maintain that. Now look, I work at an institution in a certain type of capacity as maybe you could consider me a content manager or a Web content manager. I understand some html; I understand some xml. I know what it takes, not only to create a portal like the one we have here but to create another one. And approximate... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FRIEND: ...I can pretty much easily approximate the cost of an actual startup. Now in this language we're asking for a lot. I think we're better off implementing something into something that already exists, purchasing the software, doing whatever we can to hit this ground, running. Now I know a lot of people had a lot of thoughts on this probably; that would be my guess. And I know Senator White is very serious about this thought and I will not minimize that at all. I respect that seriousness and I respect his attitude toward this. But I'm here to tell you, I don't like the idea of the duplicity. I don't like the idea of us forcing an Executive Board to do something that it's not even its responsibility to do. And I don't like the idea of not having the expertise or the

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understanding or the experience... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR FRIEND: ...to deal with this issue. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. (Visitors introduced.) You have heard the opening of AM1431 to LB16. Members requesting to speak: Senator Schilz, followed by Senator Price, Senator Fulton, Senator Gloor, Senator Coash, Senator Pirsch, and others. Senator Schilz, you're recognized. [LB16]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. Like Senator Friend said, this isn't maybe as sexy but I think it's important. I think Senator White has come up and has a good idea on how to look at this stuff. I question though, do we need two Web sites? Should we have one? But my biggest question comes...and I remember when I was a small kid going to school and learning about civics and government, we talked about separation of powers and how that was put in place to make sure that we didn't...that we were all kept within our bounds of what our duties and where...and how we should carry those out. And so that's my biggest question on this is where does it belong? And I think the debate should go on. I think we should hear both sides. I haven't made my mind up completely yet but I'm looking at it. And so my biggest question is where does this fit and what should it do. So with that, I'd like to hear a little more about it so I will give the rest of my time to Senator Friend. [LB16]

PRESIDENT SHEEHY: Senator Friend, you're yielded 3 minutes 30 seconds. [LB16]

SENATOR FRIEND: Thank you. Thank you, Mr. President and members of the Legislature. Thank you, Senator Schilz. I think I actually, in my opening on this amendment I actually used the term duplicity. I meant duplication. Obviously duplicity I used it incorrect...duplicity is not the term that I meant here. If I offended anyone, I apologize. I think I said that. I apologize. Let me be really straightforward here, okay? And I'll try to use the proper terms so I don't offend anybody else. We can do whatever we want with this bill. The bill, in its current form, in LB16 would probably pass. If I amend it, it would probably pass. I told Senator White about this four days ago. He's got an issue, he could have come to me in the meantime. If people stand up and want to talk about this, they stand up and talk about it. I don't corral people to do talking. If I want time to speak, I'll use my own time. That's fine. People have their own attitudes about this bill, have your attitude; push your lights; do whatever you want. But let me be straight: I didn't line up people to do any of it. And, so what? There's lights on; people want to talk about it. You want me to apologize for that? Is everybody going to apologize for the last two days when I only got a chance to talk twice because we had 30 lights on the whole time? No, they're not. A little more straight talk, and with all due respect to John McCain, a little more straight talk. I don't care what happens to this bill now. As a

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matter of fact, you guys might not even have a good chance to vote on it because I might draft up five or six floor amendments and I'll just filibuster it. The time I've known Senator White, I haven't lied to him; not once. He doesn't like my attitude? He can live with it. People out here don't like my attitude? [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FRIEND: Guess what? You can live with it. But here's the beauty and here's a little more straight talk. I don't care if this bill passes or fails, and I'll report back to the people of this state that I killed it. He wants to bracket his own bill? Go bracket it. That's not grandstanding; that's a temper tantrum. I've had them before, haven't I, and I'll probably have them again. Let's talk about the State Treasurer's duties and I'm going to go ad nauseam because I talk a few more times on this. "To render a full statement to the Department of Administrative Services, of all money received by him from whatever source, and if on account of revenue, for what year; of all penalties and interest on delinquent taxes reported or accounted for to him, and of all disbursements of public funds;" [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR FRIEND: Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Price, you're recognized. [LB16]

SENATOR PRICE: Thank you, Mr. President and members of the body. I've been fairly silent these past few hours and I rise now. In thinking about this, I thought of the idea that the transparency of glass is not dependent on who owns the glass, and that is the most important thing in front of us here today. Now to talk more about what happens when we talk about Web sites. I happen to have had the good fortune of having been a program manager for the U.S. Air Force weather agency on a joint Air Force/Army weather information network; arguably one of the largest meteorological Web sites in the world. My job was to make this machine that we had, that was a list server to begin with, into a graphic-driven tool that we could use worldwide for combat missions and flight missions and ground missions. This Web site wasn't a \$50,000 Web site; it wasn't a \$500,000 Web site; it was in the tens of millions of dollars. It was quite easy for me to write a check for a few million dollars for a server cluster to handle teraflops of data, daily; sometimes twice a day. Tens of thousands of products. So why would I talk about it? Because I have the experience of running a large program that produces a lot of complicated data points, and that bringing disparate data types into a common single pane of glass is not simple. I challenge everybody to look at your various IT departments you have and the headaches you have in trying to get your IT department to, how we like to say, capitalize and let technology be the enabler. How many times do

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we hinge on a small glitch in our e-mail servers and it seems as if business has come to a halt? There is a cost to setting up a new system. There are architectures to be considered. How are we going to port different data types? You know, run your queries? Who's going to own it? How about your interface documents, your ICDs? You're going to have to run annual maintenance. You're going to have to do data maintenance. There are data degradation considerations, let alone the security, let alone the different points of access you're going to allow now by having more ports open to data sources. So again...and then with the longest pole in that tent again being the maintenance of that site. And sometimes a brand-new source is not your best solution, because we took that joint Air Force/Army weather information network that was a list server and we converted it because it was the best and most cost-efficient solution we had. So ladies and gentlemen and members of the body here, I stand up to say that if we're talking again about transparency, the transparency of that glass is not dependent on who owns the glass. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Fulton, you're recognized. [LB16]

SENATOR FULTON: Thank you, Mr. President. Would Senator White yield to a question? [LB16]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Fulton? [LB16]

SENATOR WHITE: I'd be delighted to. [LB16]

SENATOR FULTON: Okay. Senator, the...now I have spoken with the State Treasurer about this and I have followed the media accounts which you've passed out to us about this, and there's...well, from what it sounds like, there's probably something else behind this Web site than what I'm seeing. But it stands to reason, to me, that we have a Web site now which seems to accomplish the goal of LB16. And so I guess I'd like to ask what...why would we not use what exists now? [LB16]

SENATOR WHITE: A number of different reasons. First of all, Senator, it's not required in law, and the public's right to access information should not be on the desire or the intentions, however noble, of any individual. It ought to be as a matter of right protected by law. And the State Treasurer's Web site is not commanded by law, nor is its content defined as what must be provided as a matter of law. And if we're a nation of laws and not men, the right for the public to know must and should be protected by law. That's one. Second, one of the points is, after the initial draft I went to the Treasurer and I suggested to him that I had concerns that any one individual contain content, to determine content, but I asked him would he administer the site if the Executive Board, as a group, could specify the general rules of what should be there. He said no. He said he had no interest whatsoever in anyway working under content dictated by the

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Executive Board because it would be an invasion of his powers as an executive member as the Treasurer. That gave me a number of concerns. First of all, the laws are passed by us and it is their job to execute them. Now we can pass them in a lot of different ways but if we say this information should be presented to the public, then it is the duty of the executive branch to carry that out; not to tell us, as he did in the paper subsequent to my meeting, he told us he didn't trust us; he didn't want us having anything to say about what should be in there because it's the fox guarding the henhouse. Well, in fact, the budget process of what we budget in already transparent; people can always find it. It's whether it's spent or not. It's whether how it's spent that is not transparent, and that is an executive function. And it is our duty to ensure, under the laws, that the public have access to it. In terms of the duplication of cost already reached out the Treasurer, he rebuffed it entirely. He said he did not trust the Legislature; did not want to answer to the Legislature; didn't want to have anything to do with it. [LB16]

SENATOR FULTON: Okay, Senator. The first point, that it's not in law, would we not be making it in law if we were to pass AM1431? Would we not be providing statutorily what is being accomplished right now? Would that not...so I'm hearing two concerns. Number one, it's not in the law presently; number two, he was...the Treasurer was not cooperative. With respect to number one, wouldn't our passage of a bill make it statutory? [LB16]

SENATOR WHITE: There would be a statutory obligation that a Web site be there, but content would be everything and that is one of the biggest problems we have. If you go to Nebraskaspending.com, as I've told my friend, Senator Friend, the first thing you see is a picture of the Treasurer. It is, in fact, a big political ad. And I'll be honest with you, that's been a problem in my mind, not just this officer, but a number of officers using state money to get on TV, to get on Web sites, to put their picture up, and, in fact, use state resources to develop name recognition, which is the first tool in a political career. I have a real problem with that. That's why I wanted the Executive Board, which will never allow any one person to capture a Web site or prosper on it or use it to advance themselves, to dictate content. [LB16]

SENATOR FULTON: Okay. [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FULTON: The second point: In the original bill, wasn't it made optional? That's the part...see, I had brought this, a bill similar to this, only I didn't look on the spending side. I was trying to get a Web site put together on the revenue side and I got shot down because I was trying to do it through our branch of government, is what I think. Now the Treasurer comes out and he makes a Web site, which is kind of what I wanted to accomplish anyway, and so I applauded it. [LB16]

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SENATOR WHITE: Oh, I do too. [LB16]

SENATOR FULTON: Now if he... [LB16]

SENATOR WHITE: But it was spending only. It was not tax revenue. [LB16]

SENATOR FULTON: Yeah, understood. Your bill made it optional. If he chose not to comply with whatever it is an Executive Board is saying, then we would appropriate that responsibility to ourself. [LB16]

SENATOR WHITE: We would give it to the Executive Board and the Clerk of the Legislature. [LB16]

SENATOR FULTON: So it seems that if he was given an option and he said no, that is within what the original bill put forward. [LB16]

SENATOR WHITE: Yeah. And the reason that's there, Senator, is because he did have it there. He said no... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR WHITE: ...but he won't always be the Treasurer. The next Treasurer may have a different view. [LB16]

PRESIDENT SHEEHY: Time. Time, Senator. Thank you, Senator Fulton. Thank you, Senator White. Mr. Clerk, do you have items for the record. [LB16]

CLERK: I do, Mr. President. I have a communication from the Governor to the Clerk. (Read re LB198, LB198A, LB430, LB315, LB313, LB316, LB414, LB414A, LB456, LB545, and LB545A.) And Mr. President, finally, I have a Reference report referring gubernatorial appointees to a standing committee for a confirmation hearing. That's all. Thank you, Mr. President. (Legislative Journal pages 1604-1605.) [LB198 LB198A LB430 LB315 LB313 LB316 LB414 LB414A LB456 LB545 LB545A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Speaker Flood, you're recognized for an announcement. []

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. We just received good news from the Governor. In moments, you'll be receiving a written copy of that letter and another document. A couple of quick points: There will be no dinner tonight in the Capitol. We will adjourn prior to 6 p.m. Tomorrow night will be a late night; we have a lot of work to do. We're going to take up Final Reading on the consent

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calendar, which is going to take a considerable amount of time given the number of bills that we have. There will also be some other Final Reading on tomorrow's agenda. The question that many of you have is, when are we going to take up Final Reading on bills that have A bills? Given this announcement and the fact that we do not have veto overrides to consider as it relates to the budget, it is my intention to take those bills up on Thursday. You will be receiving a copy that my office prepared of all the bills on Final Reading that have a General Fund impact. You will note LB35 is on there. It now has an amendment to it. And LB16, which has a General Fund impact, is also on that list although we will not be taking that up on Thursday because it's under discussion right now on Select File. I guess there is a chance we could if it came back in time, but it's not likely. I will make this offer to anybody in here: First of all, if you do not want your bill read on Final Reading this year because of the General Fund impact after looking at the financial statement, contact me, contact my office, myself or Laurie Weber. Let us know that you do not want it read this year and I will, without requiring a priority, next year schedule the bill after the mid-biennium budget is considered and resolved and passed. It will not require a priority designation next year if you so choose. I will not be playing games with these bills on the agenda. We don't do that. They will be listed on the agenda in the same fashion that all Final Reading bills are listed on the agenda, in keeping with my practice. So to the extent the Legislature wants to pick and choose through these, those individual senators or groups of senators or committees need to be talking with other members of the body to shore up your votes. That will be taken up on Thursday morning. Again I want to repeat: Tomorrow I do anticipate going late, given all of the consent calendar, Final, and the other matters we have to take up. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Continuing with floor discussion on the Friend amendment, AM1431 to LB16. Members requesting to speak are Senator Coash, followed by Senator Pirsch, Senator Christensen, Senator Friend, Senator White, Senator McCoy, and others. Senator Coash, you're recognized. [LB16]

SENATOR COASH: Thank you, Mr. President and members of the body. So far in the debate what I've heard is there's consensus on the intent of LB16, which is the same as the intent of AM1431 which is transparency. Let's let the citizens who we represent see how we spend our money, see what comes in, see what goes out. The question, I guess, is who's going to run this? I'm concerned about efficiency. I'm concerned about duties. And I want us to remember that accountability and transparency are related. So we have to ask ourselves who do we hold accountable? The question seems to be, us as a Legislature, 49, or one person? I'm not sure where I am on this. I'm going to continue to listen but I'm going to yield the rest of my time to Senator Friend. Thank you. [LB16]

PRESIDENT SHEEHY: Senator Friend, you're yielded 3 minutes 45 seconds. [LB16]

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SENATOR FRIEND: Thank you, Senator Coash, and thank you, Mr. President. The Legislature appropriates funds. We also pass laws. We've been discussing that here. And we've also discussed the idea that it's our job to make sure those laws are carried out. Why couldn't we pass a law to force the Treasurer to do exactly what we wanted, because that's all this does now. Right now, there's a Web site up in www.Nebraskaspending.com, that's not mandatory. What we're doing is making the transition to mandatory and we're also putting some requirements around it--requirements that this Legislature advanced from General to Select File. If you're going to leave it sitting with the Legislature, I think it's a bad idea but if you're going to, wouldn't the Appropriations Committee be a better spot? So in other words, not that they're not busy enough, but in other words they're the ones that appropriate the funds. Now I know, I understand. The Exec Board is an Exec Board; it's an administrative council; it's the one that creates things; it's the one that manages things around here. I get that. There's a fourth point I wanted to make. I don't care who the Treasurer is. I don't care who's on the Exec Board. Because in six years or five years or seven years, they're all going to be different. But what we're doing...and I don't care what kind of comments were in the World-Herald--a fox in a henhouse. I couldn't care less. That's irrelevant to me. That's a fight that I'm not involved in. What's relevant to me is who should actually have this duty: a constitutional office, when we give them the directive to actually do it, or the Exec Board that has absolutely nothing to do with creating a Web site of this nature in law. And it would be, as far as I'm concerned, a drastic change in policy. I wouldn't have put this amendment up if I wasn't really, really serious about it. Me, personally. I don't know what you guys out here think about it. And maybe people out here think I'm being a jerk--or use another term. Fine. Do it. There was a point a day and a half ago where I wasn't even thinking about taking this to a vote. [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FRIEND: But I'm going to. Because I don't think, if you look down all the things that I gave in my opening, in our...and I haven't heard...in our...and Senator White made a point. They haven't had a chance to talk about it yet. Well, you know what? Get in the queue. My light is on. I'll give him my next piece of time to talk about this. Nothing will you be able to find in the constitution or in state law that can refute the idea that if we're going to create something like this, it's appropriate in a different venue; not within the Exec Board. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Pirsch, you're recognized. [LB16]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. I think that transparency is just essential, and that was one of the themes I ran on when I campaigned for this office and I believe that deeply to this day, and actually had, upon coming to the office, looked at setting up a transparency Web site similar to the one

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that...the two...similar to the one that the Treasurer has set up now for...it's been into effect, and the one that Senator White is asking us to look at now. And I guess with respect to the elements that were present with the existing site that's been up and running, I felt it met so much of the requirements that I was looking at disclosing to the public, that it seemed to me and discouraged me from going forward just because I felt that it would be duplicative and that those resources could be better spent than elsewhere. So that's my...that's what my concern would be, is that we would be...and I brought this up on General, that we not reinvent the wheel. We all like transparency. This isn't...I think the issue here isn't should a Web site exist that discloses; we all agree that it should exist and it does. The question is, is that Web site that currently exists and has existed, somehow inadequate? And I don't think so. I think that when you look at the costs which we have to weigh--and I know the estimate...I believe...would Senator White yielded to a question? [LB16]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Pirsch? [LB16]

SENATOR WHITE: Certainly, Senator Pirsch. [LB16]

SENATOR PIRSCH: Could you remind me again? I can't remember from the General File debate, but what was the fiscal...what was the A bill that was attached to the creation of this? [LB16]

SENATOR WHITE: The fiscal note is unclear. We put on a fiscal note of \$100,000 though I have every reason to believe it would be much less. If you look, for example, at the article from the Lincoln Journal Star, that the Treasurer sent around, he set his up for \$36,000. Ours should be even less [LB16]

SENATOR PIRSCH: Sure, and... [LB16]

SENATOR WHITE: Ours should be even less than that because a lot of the work is being done under the stimulus act which we're required to do accounting for, and so it should be even less than that. [LB16]

SENATOR PIRSCH: Well, I guess that was my question, is...did...was there an A bill that was passed and did it assign a number to it? [LB16]

SENATOR WHITE: Yeah. The A bill made available \$100,000... [LB16]

SENATOR PIRSCH: Okay, and... [LB16]

SENATOR WHITE: ...to build this Web site. Though we thought it could be done for much less. [LB16]

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SENATOR PIRSCH: Okay. And that's my...and that would be my concern is that, if in fact...who did the estimate for the \$100,000? [LB16]

SENATOR WHITE: Well, we tried to talk to a number of different people about it, and there was such a dispute. There was no one number. I mean, literally the analysts came to me and said we don't know. I will say ALEC said that most of these Web sites are much less expensive than the initial predictions are. [LB16]

SENATOR PIRSCH: But do you know who did the financial...the fiscal estimate? Was that the Legislative Research Office? [LB16]

SENATOR WHITE: It was literally how much number do you want to put down for it, Senator Pirsch. They came to me and said we can't estimate this. And I said, well, if you look at the experience of other states, they have done it for as little as \$5,000. Some have spent as much as \$500,000. The Treasurer's was \$36,000. [LB16]

SENATOR PIRSCH: But at the end of the day, whose name was it that is attached to the estimate of \$100,000? [LB16]

SENATOR WHITE: Well, I said, then put down \$100,000; I'll explain the uncertainty to the floor. That's what happened. [LB16]

SENATOR PIRSCH: Okay. Okay. Well, that's my concern is there is a, in things like this, a one-time up-front capital expenditure that's a larger sum... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR PIRSCH: ...as the Treasurer...that the Treasurer has already experienced--that \$40,000. Which would be, in my estimation, at least how much we would once again spend for essentially the same information. And then the ongoing maintenance costs are lower. The Treasurer's Office said that they would maintain it with \$1,500 a year. And so to the extent that we have this existing asset, we should build on it, I feel. And if we need to require the Treasurer to meet some of the things you said, then maybe we should require that insofar as you have to have...as far as content and that they must maintain it and those kind of things that we want to control. But I just think that we should...we have transparency. Let's utilize our existing asset and save money and end up with the same result. Thank you. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Christensen, you're recognized. [LB16]

SENATOR CHRISTENSEN: Thank you, Mr. President. You know, I appreciate the talk that we're having on this transparency act. You know, I don't know...think the issue

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really is about transparency more than it's about who is in control and who's going to say what it does. You know, the Exec Board, if we left it there, could just say, you know, the State Treasurer is going to do it. Or they could simply pick someone else. Or we could just mandate right here that it's going to be the Treasurer. You know, I appreciate this discussion because I brought this to Exec Board. We discussed this several times. I went and visited with the Treasurer myself and got some information about his site; handed it out at Exec Board. And several times we put off advancing this bill because we had these very same discussions. I wondered about the duplication that we would potentially have if there was two different sites and if that was a good use of money. And I understand Senator White's side also, that having somebody independently doing that. I think that's all part of this policy discussion that we need to have today. I think this is excellent discussion that we're having. I think we need to thoroughly think about this issue. Do we want the Treasurer simply doing it, that handles it? Or as Senator Friend said, maybe it should be through appropriations somewhere else. I think that's the discussion we really need to have here and decide where we think this needs to go. I'm looking forward to the discussion on this bill. I hope it doesn't end quickly because I think we need to discuss this. You know, I missed the vote that when we sent it out of Exec, or I would have probably had more questions that day. But I appreciate this discussion and I'd like to yield the rest of my time to Senator White. [LB16]

PRESIDENT SHEEHY: Senator White, you're yielded 2 minutes 55 seconds. [LB16]

SENATOR WHITE: I want to thank Senator Christensen for that courtesy. Let me explain, ladies and gentlemen, what the history of this was. We seem to have a concern over whether or not the Treasurer should be involved in the operation of this Web site. I agree. That's why after we introduced the bill I went to the Treasurer and asked him to participate. He said, I'm fine; just fund it and I'll do it and you have no right to tell us what's in it, what must be reported, how we report it, or when we report it, because I am an independent executive officer and that's beyond and that's unconstitutional. And I'll be honest with you, one of the concerns I had, the reason I proposed this bill the way I did, is I have watched, over the years, the state resources are hijacked to advance political careers. I have no problem with people being ambitious, politically. I have no problem with them working to get public attention. I have a problem with the state paying for advertising for them. And this Web site that the Treasurer runs was used state money and prominently features, first, his picture. That's one problem. And that's why I wanted the Executive Board, a committee of a number of legislators who will never allow, in my belief, any one person to take advantage of a state resource like a Web site to advance their own personal career. That's one problem. Another problem is information truly is power. It's not just that it's available; it's how it's presented and how available and readily available is it. For example, in this body we have been repeatedly frustrated in our discussions of Health and Human Services. [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

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SENATOR WHITE: We have been repeatedly frustrated because they had not revealed essential spending facts where our money is going. We appropriate money but this Web site is also about when it's spent and how well it's spent. We have had issues with roads not being built in western Nebraska because the Department of Roads has literally sat on many millions of dollars and not completed vital expressways vital for the health of rural communities. We have children not getting vital funds to take care of their problems and they have not reported that. We have now a Treasurer who was invited by me to participate in the process, and the bill still allows it if he will, but it allows oversight by the Executive Board because I'm sick of the politics being played with state money. It's the public's money. It's the public's information. They have a right to know everything without one person judging what they actually get to look at and how they look at it. That decision is too important... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR WHITE: ...for just any one elected official. [LB16]

PRESIDENT SHEEHY: Thank you, Senator White; thank you, Senator Christensen. Senator Friend, you're recognized. [LB16]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I agree with him except for the fact that it's too important for one man...managing the executive decisions of the state are too important for one man, too, aren't they? I mean, this analogy doesn't play out. We have a Governor elected by all of the people of this state to do a job. We have a Treasurer elected by all the people who choose to vote to do a job. We have an Auditor, the same thing. Well, what exactly...what point are we trying to make here? I agree with everything he said except that. I also agree with the idea that we make a law and tell the Treasurer this is what you're going to do; this is how it's going to operate. That's better than oversight. We have a revised statute that says you're going to do it; what's this oversight thing. I've got a committee that's overseeing something. You really think that that's better than a revised statute? The same law that moved from General...the same language that moved from General File to Select File has now been transitioned over to the Treasurer's duties. That's it. So if it was good enough...this is where I refute; this is where I disagree with Senator White. If it was good enough on General File and the Executive Board was managing it, why isn't it good enough and an executive officer in the state of Nebraska is managing it? Forget about this one man or one lady thing. The people of Nebraska elected this person to do a job. We have created a statute that tells them this is part of the job that you're going to do. We can make this statute look anyway we want. With that, I would...how much time do I have, Mr. President? [LB16]

PRESIDENT SHEEHY: Three minutes. [LB16]

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SENATOR FRIEND: Senator White, I would like to yield the rest of my time to Senator White. [LB16]

PRESIDENT SHEEHY: Senator White, you're yielded 2 minutes 55 seconds. [LB16]

SENATOR WHITE: And I would very much like to also thank Senator Friend's courtesy. We are a couple of passionate guys who believe strongly in some things, and that's one of the things I deeply appreciate about Senator Friend is he cares. Let me talk to Senator Friend directly about something that really bothers me, Senator Friend. I went to the Treasurer with exactly that. I went to the Treasurer and you look at the bill you can see the footprints. I said, look, can we work together? You've got this Web site; will you agree that the Executive Board--because things will ebb and flow--will give the general guidelines of what must be planned, what should not be? Because there are some things we talked about. For example, any individual's tax information has no business showing up on a Web site. None, okay? But there are things that change. We have new programs, we have new problems. Will you agree to that? And he said no. And then in the paper he said not only no, but I'm not going to let the Legislature, the fox, guard the henhouse. I've got news for him. We are the henhouse, okay? This is where the chickens come from. May I get a gavel, Mr. President? [LB16]

PRESIDENT SHEEHY: (Gavel) [LB16]

SENATOR WHITE: Thank you. We are the henhouse. This is a Treasurer who very properly set up a Web site and did a good thing, but it should have been a matter of law and the content should be set by law, and the contents should not be controlled by any one individual. If you tell me I get to control the content and the order of information and how readily available and how it's indexed, I can tell you right now I can complete a political agenda. I can bury the fact that we have problems in HHS spending, in the Beatrice home because we still don't know how much we spent; we still don't know how much we spent... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR WHITE: ...for healthcare for the people we moved out of Beatrice. I can bury that in a Web site. It might be there but you'll never find it. Or I could choose to put that forefront, right front, first thing you see in the Web site, "Scandal in HHS." That's a political agenda by manipulating the presentation and the place the information is made available. That's a problem, folks. That's why no one individual of whatever party should have the right to control the content and presentation of information. In terms of the management, Senator Friend and other senators, I have no problem if the Treasurer would manage the site under general guidelines set by the Executive Board. And that, by the way, is done to ensure some of our constituents who are a very concerned about

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sensitive business information being released under the tax stuff, the reporting. [LB16]

PRESIDENT SHEEHY: Senator, you may continue on your time. [LB16]

SENATOR WHITE: Thank you, Mr. President. They're very concerned. Very concerned that what's going to happen is sensitive applications for tax advantage will reveal business strategy. Well, the presence of the Executive Board, able to act quickly, would stop that. They could say, no, that's a sensitive, potentially confidential information; until we can address the issue and look at it, we won't let it go on. Not just one person. Giving one person that power is to give, in my view, too much power to a person. And I'd like to tell you, well, we can...we should trust it; we should feel okay with it. But that has not been the case. Go to Nebraskaspending.com. First of all, the name is loaded politically. It's loaded that all we do is spend. It's not "Nebraska investment.com." It's not "Your government at work.com;" "Your money, how is it being invested." It's "Nebraska spending." That's a loaded term, okay? Now we also don't talk about things that are, for example, an embarrassment to the Treasurer. If you look--and Senator Nantkes brought this to my attention and I appreciate it--right now, the Treasurer cannot find \$1,432,884 of unclaimed property. The books are out of balance, okay? We don't know where it is. Now is that anywhere in his report? Well, no. Would I expect it to be? No. But is that the kind of thing that could be used politically to embarrass him or, on the other hand, could be buried because it's a political embarrassment? I have this fundamental belief, the first line of liberty of an elected government is the Legislature, and we are 49 for a reason. We are numerous voices so no one person can push the state in a direction that is really harmful for it. And that is never more true than when you reveal or fail to reveal critical information. I believe firmly that what we need to do as a people is make all of our information available and it needs to be made available in a readily searchable area and not be the product of any one political ambition or agenda. That's why I wanted the Executive Board, which is small enough; it's always sitting; it can respond in a crisis. If something comes up, it can ask that the Web site be updated in a manner that makes sense. It is not the product of any one urban area or any one rural area of any one party or any two parties. It is not the product of one sex or two. It's everybody in Nebraska. As nearly as we can bring it down to a workable control group, it's the Executive Board. And as you know, the Executive Board has to work with us every day during the session and they try to be responsive. That's why I wanted the Executive Board's role in it. I would have preferred that the Treasurer agree that he allow the Executive Board, through the Legislature, to set the contents and we would help fund it and he would administer it. But he rejected that utterly and then he slandered this body. He said we are foxes; we are guarding the henhouses; that it is a violation of the constitution for us to tell him what must be reported. He said, literally, we are the fox guarding the henhouse. I reject that. I also reject that attitude. I think this body is incredibly conscientious and I think we have every right to tell the public and say this is where we appropriated money. Now has that money been spent where we appropriate it? Is money being held back? If so, by whom? [LB16]

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PRESIDENT SHEEHY: One minute. [LB16]

SENATOR WHITE: Are some agencies overspending their allotment? Have their monies increased more than they should? How is the Treasurer doing in running his own office? These are all fair questions that should be decided fairly across the board by no one person. And I'll be honest with you, I also have concerns about the Treasurer and the Governor. We are a divided system for a reason. I want the Legislature to be fairly represented in that Web site. I don't want favor. I don't want it misstated. I just want it accurate. And we are vulnerable because most of the year we're not here and we can't speak with one voice. And so I would tell you, as an institutional matter, we are the safest one to entrust this job to and we are the most vulnerable if the Web site is abused. And when we are described as the foxes guarding the henhouse, we're being abused. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator White. (Visitors introduced.) Continuing with floor discussion on the Friend amendment AM1431 to LB16, members requesting to speak, Senator McCoy, followed by Senator Wightman, Senator Mello, Senator Utter, Senator Hansen, Senator Nordquist, and others. Senator McCoy, you're recognized. [LB16]

SENATOR McCOY: Thank you, Mr. President and members of the body. I stand in support of AM1431. Each one of us represents a portion of our great state of Nebraska, and a common theme with constituents in the district that I'm honored to represent believe that transparency is a good idea but they also expect us to be efficient. In the economic times that we find ourselves in, they expect us to manage the resources that are under our care, with care. And I have reservations about the duplication of Web sites that Senator Friend touched on earlier. And with that Mr. President, I would yield the remainder of my time to Senator Lautenbaugh. [LB16]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 4 minutes. [LB16]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and thank you, Senator McCoy. I too rise in support of this amendment and let me explain my thoughts here although some of them won't be original, I can tell you that. I'm concerned about the duplication, as well. I'm concerned about the cost. I do have some information regarding the bids that the Treasurer's Web site sought. They had an initial bid of \$1 million for that Web site and the lowest they ever got was \$250,000. So Senator Osborn...I'm sorry, Treasurer Osborn went with interns to develop the Web site. That's how he got away with spending \$36,000. He had interns do the work as I understand it. And I applaud him. It's innovative. It was the right thing to do. It's great information for the public, and we'll all in favor of transparency, I believe. But I think it's important, before we stand here and judge the Treasurer, I don't think he's behind this but we're talking about him

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slandering this body by using such harsh language as the fox guarding the henhouse. Well, I don't consider that harsh, first of all, and I don't consider it slander, but I would note the day that article appeared it was open mike day on the budget, and someone stood up at this microphone and talked about how much the Treasurer's Office has increased, how much the budget had increased, how much he was spending, and how we needed to look at these possibly out-of-control executive officers. And at the same time, a comment was made off the floor to the press: Well, that will teach him to talk about the fox in the henhouse. Well, let me set the record straight. Those increases in spending were due to the fact that we increased the duties of the Treasurer, and the increases took place under his predecessor. His first budget cut the budget. This year's budget is flat. This Treasurer has not increased spending, yet he was impugned at the mike during the budget debate, falsely. There's no other way to put it: falsely. And now we have the shot today about, well, there's unclaimed property. I'm sure that happened on his watch too. What's he been here? Two years? He must be responsible for that too, is the implication. But we don't know anything more about it other than the accusation. And this is bringing a lot of heat for some reason and I'm getting worked up, as well, because I think this amendment is just a commonsense amendment. I trust the Treasurer to do what he's already doing. If the next Treasurer doesn't do the Web site in the right way, we should probably throw that Treasurer out of office. That is why we have elections from time to time. I don't like this process where we take potshots at people in the executive branch. [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR LAUTENBAUGH: We impugn the job they do, especially when someone is doing a good job, as he is on this issue with this Web site. And now we suggest, well, maybe the Treasurer doesn't trust us so he doesn't want to work with us on the Web site. Well, gosh, I can't imagine why he might have trust issues with this Legislature at this point. I'm being sarcastic, of course. I can readily imagine why there might be trust issues here. He's doing a good job. I applaud him for the Web site he's put up. Let me say, thank you Shane Osborn, and I'd urge you to vote for this amendment. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Wightman, you're recognized. [LB16]

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. I do stand...I rise in opposition to AM1431 and in support of LB16 as it now stands before this body. I do take a lot of issue with the Journal Star article, at least that part of it that says that leaving the Legislature in control of this Web site and the publicity is like having the fox guard the henhouse. We are responsible for the budget. The Appropriations Committee is responsible for the budget. That is a legislative function and it seems to me that it is proper that we have our own Web site. There's been a lot of negotiations before the bill reached the point that it is now before the Legislature. Some

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of that was Senator White's amendment. Some of it was a committee amendment. The committee amendment and some of this was at Senator White's suggestion that the content be dictated or at least delegated to the Executive Board; that the Executive Board would be in charge of determining what would be on that Web site. Senator White did, by a previous amendment, allow the State Treasurer, allow the delegation to the State Treasurer, if they met certain standards that we had set up in the bill. We also delayed the implementation date of LB16 to July 1, 2010, and that was partly to see if something could be worked out with the Treasurer's Office. So I do support LB16 in its present form. I do think we have to look hard at what the cost of this Web site may be. I don't think we have a very good handle on that at the present time. I know that we've talked about using the stimulus money and at least requiring DAS to purchase a computer that would be compatible with this system; that we would be required to provide, for the Web site, information that would be required by the Legislative Council. But I think we have to work our way through this. That might make a difference on where we go with the Treasurer, but I think the language is in place to do that. So I would ask for support of LB16 as it was originally...as it is now before the Legislature, and a vote against AM1431. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Mello, you're recognized. [LB16]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. I rise in opposition to AM1431 for multiple reasons. But I've been listening to the debate and have enjoyed some of the statements that have been made, and I feel that part of my time I'd like to try to answer a few. And recently Senator Lautenbaugh discussed the Auditor's letter to the Treasurer in regard to some of the problems that have been happening in the State Treasurer's Office. I did ask, in the Appropriations Committee hearing, where our State Treasurer for the second budget in a row failed to attend to discuss his budget, asked his office about this letter. And their response was we're working on it. There was some longstanding problems in the Treasurer's Office. They said longstanding problems drifting back to numerous Treasurers, actually, that dealt with some of these problems and that they're trying to solve them. So to answer what Senator Lautenbaugh just asked, that was something that did just come up. A few other things, too, regarding the creation of this actual Nebraskaspending.com. Please take a look at it. I think for the viewers at home, go to Nebraskaspending.com and see what you see is the first thing on this Web site. I think Senator White said it much more eloquently, which is it is the "politicalization" of a tool that's funded by taxpayers. That's all it is. It's Shane Osborn, our State Treasurer, with his own individualized state logo discussing what he is doing which is not in state statute. LB16 puts transparency in state statute, first and foremost. I've had this conversation with my good friend, Senator Fulton, on the idea of what he tried to do years ago, which ultimately is what LB16 does. But more importantly, the biggest point that I would like to make prior to I think Senator Nordquist has discussed with Senator Friend and Senator Flood and White on a

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possible compromise, which is the way that this current situation regarding Nebraskaspending.com is situated, is not in the best public...it's not in the public interest in no other way or no other uncertain terms is because similar to the Treasurer's unclaimed property television ads or similar to the Attorney General's television ads that are discussing various issues that his office can help you with, it is the "politicalization" of state tax dollars to focus on one elected official for a service and for a job responsibility that they are elected to do already. And that is the problem I have with this debate that's occurring today. Senator McCoy said that his district residents in District 39 support transparency but they also support government efficiency. I echo that, as well as I would say all of our voters in all of our districts support transparency and efficiency in government. What this does, though, is not dealing with efficiency in state government. All it is doing is saying that instead of the Treasurer's Office using a tool that was funded by the Records Management Cash Fund is an important fact of this debate; that instead of having one person have their face and their say and is what...I want to read real quick what the Journal Star article says, "White's bill would give Osborn the chance to maintain the Web site. No thanks, says Osborn. He'll stick to running his own site, creating the chance that he and lawmakers will be competing for Web surfers hungry for information on where their tax dollars are spent." The reason I bring that up is because ultimately what LB16 does is it capitalizes on some actions that were taken regarding the American Recovery and Reinvestment Act where we invested money through the Department of Administrative Services to ensure that we have the utmost transparency regarding the stimulus bill, the stimulus monies that run through the state... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR MELLO: ...and then to be able to ensure that we had a longevity and a long perspective of ensuring our state government was transparent and accountable after those stimulus dollars are gone. So what LB16 does, it puts the power into hands that...where the power derived at, the Legislature. Senator White mentioned before, the Legislature. And Senator Wightman just said the Legislature determines the budget. The Legislature approves the budget. Ultimately it's the executive branch that executes the budget. All that we're doing here in LB16 is providing transparency the way it's supposed to be provided in my view, which is no names, no faces, and no political agendas. That's it. With that, Mr. President, thank you. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Mello. Senator Utter, you're recognized. [LB16]

SENATOR UTTER: Thank you, Mr. President, and good afternoon, colleagues. I just want to take a moment or two and express my support for AM1431, and it seems like a lot of the discussion this afternoon has turned to pictures and personal statements and signatures and those type of things on the Web site. I'm sure that that part of it possibly

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can be worked out. I'm not sure that it's important that the Treasurer's picture appear on that Web site but I do think that the duplication that two different Web sites would show would be poor judgment on the part of this body. It would be poor judgment on the part of the Treasurer's Office. It would be poor use of taxpayers' funds. Frankly, would be a waste of taxpayers' funds and would cause them confusion, not knowing which Web site to go to, what they should do. And it seems to me like somewhere along here that we need to combine this legislation with the Treasurer's Web site, and I'd be willing to listen as the discussion goes along, to refinements with regard to pictures and those type of things. But I also have some grave concerns about what the costs are really going to be regardless of whether we do that as a Legislature, as is proposed in LB16, or whether we adopt AM1431. I'm not sure that we as a body have got a very good handle on what those costs are. I've heard figures from \$400,000 to \$100,000 to \$35,000, and it seems to me like it would be very important and it would be prudent on our part to know exactly what those costs are going to be. With that I would yield the balance of my time to Senator Friend if he'd like it. [LB16]

PRESIDENT SHEEHY Senator Friend, you're yielded 2 minutes 45 seconds. [LB16]

SENATOR FRIEND: Thank you, Senator Utter, and thank you, Mr. President. Members of the Legislature, I do think...I had mentioned, and I wanted to bring this up, not that I have to. I was talking to Senator White earlier. He's right. You know, we're passionate people and he and I have had disagreements. That won't be the last time and we probably raised our voices to each other and acted mean. Well, it ain't going to be the last time, okay? But let me tell me why I'm so passionate about this, and I just had this discussion off the mike with Senator Mello, I don't bring amendments like this and then get to the point where I do have those type of feelings or they exude, if I don't feel strongly about it. Senator White has strong feelings about this. Well, so do I. We elect a Treasurer to do a job. We elect a Governor to do a job. We elect an Auditor to do a job. And I think the Exec Board is elected by all of us...I mean, we're missing...and I don't want to get involved in this World-Herald story: the fox in the henhouse stuff. Senator Mello brought up on the record that the Treasurer said no thanks. That wasn't a direct quote. The Treasurer didn't say that. That was part of the story. The writer put that in. I can read this. I used to write these stories. I know how they are. I'm telling you I'm not digging down into that type of minutia. I'm digging down to the standpoint that I think that there's a constitutional office, and if I go through the State Treasurer's duties it seems to mirror it and it seems to apply...statutory language like this... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FRIEND: ...seems to apply most directly with the Treasurer. Now I haven't been involved in the negotiations. I don't know...I can't decide on the he said, she said stuff. All I know is I think that this is more appropriate. And I can go through the constitution, I can go through the statutes, and it would indicate to us that that division of

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labor needs to be maintained. I don't think the Legislature's job, especially if we force it by statute, is to go out and provide all that info...you think that's not going to end up being political? There's an Exec Board that controls it. So, look, if...people have talked about the Auditor. People have...I'm telling you I looked at all of these statutes and I think it seems more appropriate with the Treasurer. Now that's just my take. My concern now, the final concern as to what that's going to look like and what we force that particular Treasurer to do. That's what AM1431 would indicate. [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR FRIEND: Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Hansen, you're recognized. [LB16]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. I want to join in on this discussion because it's lively and I think it's important. I think the people that watch us on television, the people the hear us at home, the people that we talk to, our constituents, look at this Web site now. I get probably three, four, five, maybe a week saying we've seen this on the Treasurer's Web site. It's a good Web site. There's nothing wrong with it. If we're talking about pictures, the first time I went on earlier this session I saw a picture of the state-elected Treasurer of the state of Nebraska. I bookmarked it. I haven't seen his picture since. People that use this aren't going to look at it as a political advertisement. I don't understand that. Secondly, we talked earlier about the spending side of this or the revenue side of it. When I make my checks out to the state of Nebraska, I put the Department of Revenue and then I have to fill in what I don't have, but I fill in those checks. But it's made out to the Department of Revenue. He cashes those checks, I assume, and sends it to the Treasurer. The Treasurer is the spender. He's in charge of spending. He's in charge of sending out the checks to everywhere that this body says that he needs to send out those checks to. I don't have a problem with the Treasurer running a Web site. I agree with AM1431 that Senator Friend has brought. I think it's only logical. The Governor has a Web site to follow the stimulus money. That's going to be some of the spending this year. If the State Treasurer is having a Web site that's up and running and very accurate and very thorough, that's duplication in itself. This would be triplication. We don't need triplication. That's the problem that people see with the government now. You do everything in triplicate. Fill out that form in triplicate and send it to us. It's the last thing we need is more duplication. We have a Web site. Every senator in here has a Web site that's provided by the Clerk's Office. It has a picture of each one of us, whether we add to it, take it off. If we promote a townhall meeting, send out a newsletter on our own. We have contacts with constituents too. And I don't think we need to duplicate it again, and I'm sorry, but Senator Wightman, I didn't agree with what he said, that the Executive Board needs a Web site too. So I am for the amendment and would be for the bill if that

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passes. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Continuing discussion on AM1431, members requesting to speak: Senator Nordquist, followed by Senator Lautenbaugh, Senator Fulton, Senator Lathrop, Senator Haar, Senator Pahls, and others. Senator Nordquist, you're recognized. [LB16]

SENATOR NORDQUIST: Thank you, Mr. President and members. I have some concern over the current Web site. There's a lot of discussion about this is duplication. Well, you know, it's not when we're talking about trying to get to real transparency here. If you look at the Treasurer's Web site right now, click on expenditures, he has a limit of \$500,000 that he doesn't report below. That's not transparency. I think Senator Price said it doesn't matter who owns the glass. Well, it matters what type of glass it is. If it's tinted completely black and you can't see anything, then that's not transparent like a crystal-clear sheet of glass that LB16 would be, to allow people to see every expenditure. I was on...I handed out a document here from this last month's Governing magazine, and they have a couple example sites. I went to the Texas site, and within two minutes I was able to see that they spent \$280 on Taco Bell for some reason, the state of Texas did. That's what the voters and that's what our citizens expect and that's what we should be giving them, is that kind of detail. Now there's ways we can do it through the Treasurer's Office and I think we're getting something worked out here to remove the "politicalization" of it and get to the detailed information. We can set some parameters and say we want you to report all expenditures on some sort of searchable database. I think that's something we can get to. Because ultimately there is the potential that transparency is going to save us money. And if you read this article, it's two pages, they talk about a number of sites that have shown savings. Texas, for instance, one agency found out that they had five different vendors for toner. Well, they consolidated, had a competitive bid, and they saved \$73,000 a year on toner just on a simple consolidation of a couple contracts. They discontinued...they found they had several pager contracts that were not being used or were used infrequently; saved \$14,000 there. In total, \$4.2 million worth of savings because they had this complete, crystal-clear, transparent system that right now I don't think that the Treasurer's Web site is offering us, but if we work on a compromise here to get down to that level of detail we can have a...we can achieve that level of transparency and potentially that level of fiscal savings. So thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Nordquist. Senator Lautenbaugh, you're recognized. [LB16]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I do want to be...I feel like I'm belaboring a point here, but I do want to be clear. We heard additionally from Senator Mello about this problem with unclaimed property and that the Treasurer's Office responded, when asked in committee, they're working on it.

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Apparently it was wrong of him in the eyes of some on the committee to not be there personally, but he wasn't, but someone was and the response was, they're working on it. Now why are we talking about that today? In what way is that germane to this Web site issue? Shane Osborn didn't call me and say, hey, will you run with an amendment on LB16? Why can't we confine this to a discussion of whether or not we should do that? We've heard talk about how he will politicize this because he has his picture on it. As someone just pointed out, much like all of us on our official Web sites here at the Capitol, we have our pictures on it. For better or for worse, in my case, we have our pictures on our Web sites. I'd be happy to take it off, honestly. But this is not about the Treasurer but I'm going to stand and defend him because he's done a good thing here. And again, he didn't say no thanks. That's not a quote in this article. I don't know what he said. But if he was asked, hey, do you mind doing this as we say, run by the Exec Board, I can imagine him perhaps saying no thanks, but that's not a quote. That's not what he said. His budget the last few years also has nothing to do with this Web site. But because he used such offensive language as fox guarding the henhouse, once again I didn't blanch when I read that, I thought, you know, I suppose he did say it, that is at least a quote in the article, we took a cheap shot at him in the budget process. How dare he...how dare he use such language when speaking of the Legislature? Fox guarding the henhouse. This is an important issue. Transparency is important. But just because someone may disagree with us outside of this branch of government, I don't think it's open season on their budget; I don't think it's open season on unclaimed property problems apparently dating back for years prior. I think we could just discuss the amendment because this has nothing to do with those issues, but yet the Treasurer is being hit with those and I don't see the reason for it and it isn't right. He's done a good thing here. He's been a champion for transparency and I applaud him and I urge you to support the amendment. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Fulton, you're recognized. [LB16]

SENATOR FULTON: Thank you, Mr. President. Would Senator White yield to a question? [LB16]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Fulton? [LB16]

SENATOR WHITE: I certainly will. [LB16]

SENATOR FULTON: Senator, we were discussing a little bit when I was last up to talk and we ran out of time, the two points that you brought up we've touched on. There is another point which seems to be one of the issues that you have and probably many others have, and that is the utilization of the Treasurer's picture on the Web site. [LB16]

SENATOR WHITE: Yeah, and not just his picture and it's not just the Treasurer. I have

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a real objection, Senator Fulton, to a trend that is a national trend--it's discussed in a lot of political journals--that we have various elected officials making, quote, public service announcements using public money or public resources that really aren't about the public service. They're really about advancing the name recognition of that particular politician. I have a real problem with public funds or resources being used in that manner. The public comes to this Web site for information that belongs to the public--their money, how's it being spent, how's it being used. It should not be an occasion for any one elected official to say, look at what I brought you, public; I'm guarding your money; I'm the real guard of the henhouse; here's what I've done for you. That's (inaudible) should be. [LB16]

SENATOR FULTON: How do we...I guess how do we...I'm looking at...so our Web sites...our Web sites have our pictures on them. For me personally, I send out updates to folks that have contacted my office. [LB16]

SENATOR WHITE: Correct. [LB16]

SENATOR FULTON: I mean, we...in fact you and I were on the receiving end of a tax in this regard... [LB16]

SENATOR WHITE: Yes. [LB16]

SENATOR FULTON: ...both of which were nefarious and were found to be that. How do you...I see the Treasurer has a responsibility. His responsibility is to do X. And if he communicates what he's doing, in doing X, then how do we...where do we draw the line? Is that going to be the subject of this compromise amendment to follow? [LB16]

SENATOR WHITE: Well, what I would tell you is nobody is stopping the Treasurer from having a Web site. Okay? Nobody is stopping the Treasurer from having his picture up. I can tell you why my picture is up on my Web site. That's so my constituents, when they see me in town, can stop me and tell me what they're worried about and what they are concerned about, and I assume the Treasurer is the same. And I have no problem with that and if you want to talk to Senator White about it, here's his picture, here's what he's introduced, here's what he's done. What I have a problem with is the idea that we're going to spend a half a million dollars to comply with federal law on reporting under the stimulus act, which we're required to do, and that any one person say I'm bringing you this. I mean, there ought to be a Web site. Anymore than I would say, I can go on as a senator and put my picture up on the Judiciary Web site or wherever. You know, government ought to be...if you go to, for example, Kansas. Their site is run by the treasurer. There is no picture of the treasurer. There is no bio of the treasurer. There's nothing. It's just the state of Kansas and then it's got a stimulus site. So one is they have public resources being used, especially one like this... [LB16]

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SENATOR FULTON: Well, Senator, that's the...that's what's going on with our Web sites and with other stimulus...we had this issue in Appropriations Committee over the executive branch Web site to report stimulus dollars or to see how stimulus dollars are being spent. And I found that governors all over the country utilize Web sites and put their likeness or their pictures on the Web site. Is it...is that what's going on with state spending.com, Nebraska state spending? Is he saying that I'm the one bringing you this money? That's not what I see but if that's what you see then maybe we can address that. [LB16]

SENATOR WHITE: Well, in Nebraskaspending.com, he's saying I'm the one bringing transparency, and he is; there is no question about that. And it was a good thing. [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR WHITE: Senator Lautenbaugh is quite correct--it is. But if it's embodied in law, right, and says here's your information, here's public information, what I want is a neutral site that's not dedicated to any one elected official, that's not dedicated to any one vision or any one political view. I want a flat, neutral, workable site that is like a library. Just go in and get what you want and it's not there to promote any one view or person. [LB16]

SENATOR FULTON: Who would run that site then? Someone has got to... [LB16]

SENATOR WHITE: Well, I had invited the Treasurer to do that and he said he would not allow any kind of control from the Executive Board about what's in there, what's on there, and he said he just wouldn't do it. So now if you look how it's drafted, it still invites him to participate with a limited role by the Executive Board to make sure it's not abused, and it still invites him to. And if he says no under those circumstances, we can have the Clerk of the Legislature do it, but only if he says no. And nothing would evert stop him from running his own site. Now I don't want to get in a place... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR WHITE: ...where we have competing Web sites on the taxpayer dollars. I don't like it. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Thank you, Senator White. Senator Lathrop, you're recognized. [LB16]

SENATOR LATHROP: Thank you, Mr. President. I've been listening to this. I was trying to think back on LB16 when it was on General File and I was asking Senator Nordquist, I said didn't this thing sail through on General File? I mean, where did the controversy come from? You know what? I think LB16 made sense on General File and that's why it

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got about 40 votes, and I think it still makes sense because we ought to have a resource that we can trust. And this isn't a knock on Shane Osborn; I don't even know the guy. I really...I've met him but it could be...Norm Wallman could be our next Treasurer. We don't know who the next Treasurer is. It isn't about the Treasurer or who occupies that office, and I think when we thought LB16 was a good idea on General File, I don't think anything changed until this amendment came along and then it kind of took on a little bit of a partisan tone, and I really don't think it belongs here. It's a good idea. People need transparency and LB16 was a good idea on General File, and I think it still is and it still has my support. I'm going to turn the balance of my time over to Senator White if he'd like it. [LB16]

PRESIDENT SHEEHY: Senator White, you're yielded 3 minutes 35 seconds. [LB16]

SENATOR WHITE: Thank you very much. Thank you, Senator. I really appreciate that courtesy. I want the members to know we're working hard on a compromise. And one of the compromises that has been proposed to me is that we take personal identification on who the site belongs to off the site. I'm 100 percent okay with that. I appreciate that and that's very much what I'd like and that reaches a big part of my concern. I have another concern and I invite anybody's suggestion because I will look for a compromise. I don't want the site to be manipulated in the way information is presented or what information is presented for a political end. I want the information available and then people can use it for whatever political end they want. That's democracy. That's a great thing. But what I want is a simple, neutral, clean site that allows us to track information. And I ask each member of this body right now, was there some time this year when you really needed some money on spending; when you really needed to know how much was left in an agency to see whether they needed more money; how much was in an agency that we had appropriated? Like in my case, when we were to complete an expressway near Scottsbluff and it still hasn't been spent by the Department of Roads and the expressway still hasn't been built, I need exactly what Senator Lathrop just said--a reliable, neutral site to track the dollars we have appropriated. Because we don't spend them, folks; we appropriate them, and that is a huge, huge distinction. All we do is give chunks of money to different agencies. They then often don't spend them, spend them, or sometimes spend them in manners we have not approved. I want an accurate accounting of where the money is actually going, nothing more and nothing less, and I want it to be apolitical as possible. If somebody can figure out how we can do that better than what's proposed, I'm all about it; I'm all about it in a minute. And just so you understand, please look at the bill. We went on our--he didn't ask--we went to the Treasurer and suggested how can we work out something together; can we work with you? It was rejected that there was any role... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR WHITE: ...for the Legislature to talk about the terms and contents of the site.

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Rejected. All we got was, give me the money and I'll decide what to report, was what I came out of that meeting with. Rather than just write the Treasurer out of it, if you look at the bill it still invites the Treasurer to participate, and I hope he will because there's savings in that. And he should be there; it makes sense, he or the Auditor. I've got no problem with that if they manage it. I just want to make sure that we have what the public deserves: A neutral, effective site to track our appropriations, and then to actually track the spending, which is not done by us--the spending is done by other executive agencies--and also to track what tax breaks we give. I need that information to be a senator. The public needs that information to be an informed citizen. We all need that information to be an efficient government. [LB16]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator White. Mr. Clerk, do you have amendment to the amendment on your desk. [LB16]

CLERK: I do, Mr. President. If I may, two items for the record prior to that: a hearing notice from the Judiciary Committee and an explanation of vote from Senator Langemeier. [LB16 LB36]

Senator McCoy would move to amend Senator Friend's amendment with AM1469. (Legislative Journal page 1606.) [LB16]

PRESIDENT SHEEHY: Senator McCoy, you're recognized to open on AM1469. [LB16]

SENATOR McCOY: Thank you, Mr. President and members of the body. I think we've had a very good discussion about a very, very important issue to many Nebraskans and many of our constituents this afternoon. Nebraskans deserve to know where their tax dollars are going, as Senator White has very eloquently spoken about. And I believe that my amendment, which is a collaboration of a number of senators, helps to achieve that goal, and that is that the...what is the end goal? And the end goal is transparency and that's what Nebraskans care about. They care about what Senator White described, which is a Web site that is library-like in function, that is similar to what other states have enacted. And not knowing who any future Treasurer may be nor of any particular political persuasion, this allows Nebraskans to know where their tax dollars are being spent. And I would urge the adoption of this amendment in conjunction with AM1431 and the underlying bill, LB16, and I'll yield the remainder of my time to Senator White. Thank you. [LB16]

PRESIDENT SHEEHY: Senator White, you're yielded 8 minutes 15 seconds. [LB16]

SENATOR WHITE: I support Senator McCoy's amendment. I think it is good language and it will help. And therefore Senator McCoy's amendment I absolutely do support and urge you to vote for it as well. It takes a modest step to say we are not going to use this Web site to promote any one individual. It simply says: No pictures, no seals, no big

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welcome message, a modest statement about who manages it, and then the information. That is a huge step forward and I appreciate his statesmanship in helping that and Senator Flood and others. And that is a great step forward. I still then tell you we need to do more. We need to make sure, for example, that all the relevant information is presented. As it is now in the bill, there is nothing that says any transaction over \$1,000 shall be reported. Any contract with any vendor must be reported. One of the issues that we've had raised throughout this floor, folks, that is really an important issue is whether or not there's been a conflict of interest in the Foster Care Review Board between members who are receiving large contracts from Health and Human Services at the same time they are acting as an oversight board over some of its most important activities. Okay. Now, do we have a law that says contracts with HHS of X size must be reported? Right now this bill doesn't do that. That was left to the hands of the Executive Board to say, yeah. If you're in any kind of oversight capacity anywhere in the state and you're going to receive money from the agency you're overseeing...I was hoping at minimum the Exec Board would say, look, we're going to report it even if it's \$100, we're going to report that because you're in that conflict position. Other than that maybe it's \$10,000 contracts. I don't know. But that's not in this bill now if the amendments are adopted. And so what I would tell you is, and I know it's late and I know we have a lot of work to do, but if we're going to down the road that we're just going to turn it over without continuing oversight from the Legislature, then we have much more work to do. We need to talk right now about what is the minimum transactional amount that must be reported? Is it \$100? Is it \$500? Is it \$1,000? Is it \$10,000? I will tell you it sure as heck ought to be a lot less than \$500,000. And I also will tell you that if you want to know about integrity in the expenditures of government money, I think anybody that takes any money from the state of Nebraska and at the same time has any kind of oversight role anywhere in it ought to report every nickel they get from the state of Nebraska. That's just me. But those concepts, those discussion have not occurred because this bill was not drafted to accommodate that kind of delegation of power. We took it a different route because I think things change and it's hard to draft a bill to be completely inclusive and at the same time protect legitimate privacy interests. The Chamber of Commerce came to me, they had very deep concerns over the reporting of some tax information. And one the mechanisms to protect that legitimate concern was that anything would have to be ultimately approved by the Exec Board to make sure confidential information didn't hit the Web site. That was one of the levels of protection. Well, that will go away now and that worries me. Now, the bill is still a good bill. And I really want to talk more about if we're going to go down Senator Friend's road, how do we ensure that the bill does what we say, which is create a transparent Web site because it is not specific enough as it is drafted now to accommodate that goal with Senator Friend's amendment. And I don't think right now if you look at Nebraskaspending.com \$500,000 and no real vendor amounts for anybody that has a contract with the or anywhere near the kind of transparency that we have a right to expect and that the people demand of us. So I would invite more conversation. I would invite more amendments. I think we have more amendments to talk about what it

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means to be transparent. What do the people have a right to know? I had hoped to defer that to the Executive Board. But if the will of this body is to go the direction of Senator Friend to turn it over, in this case, to the Treasurer, then we need to give a lot more specific direction about both what must be included and what must not. And that's why I welcome so much Senator McCoy's amendment because it really does talk about what must not be included because in my view it's objectionable. And that is the personal information to use public information to advance one's own political designs. Now, obviously anybody can have their own Web site. We're not stopping them. We're just talking about this one, the transparency site. Thank you. And thank you, Senator McCoy. [LB16]

PRESIDENT SHEEHY: Thank you, Senator White. Thank you, Senator McCoy. You've heard the opening of the amendment to AM1469 to AM1431. Members requesting to speak are Senator Pahls, followed by Senator Friend, Senator White, Senator Hansen, and Senator Langemeier. Senator Pahls, you're recognized. [LB16]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I do not have any problem with this amendment. I'm going to speak to a larger issue. I approached this from a different tactic. What I did, I asked several people to start taking a look at some of the different Web sites of the departments and also the particular Web site we're talking about today. Now, these individuals do not go to these Web sites every day. I was just trying to find out if they were really consumer-friendly. And this was what I found and they gave me a lot of pros and cons. But I'm just going to give you the general...like on the insurance. This is what they said: There was no budget information, but overall good. Items are listed in categories and the number of their categories are small. It is consumer-oriented. But what I found out interesting was no budget information. So this is leading me to believe maybe on some of these other Web sites they do need to start putting down some of their budget information. That would make it much clearer to all of us. Went to banking. It says no budget information. Overall good, manageable. Secretary of State. No budget information. Consumer-oriented. As you can see, most of these I'd say were extremely positive about. Labor. Same thing. No budget information. Consumer-oriented. They thought is was a little bureaucratic because you had to know some of the lingo. Roads. No understandable budget information. Good site overall. Consumer-oriented. Highway projects are very technical and they didn't really understand that, which would be understandable. Motor vehicles. Lots of statistics. Consumer-oriented. Helpful category titles. Some revenue information. And after reading some of this I know the director has been really trying to work with me on some my issues because she thinks she needs a better Web site because of the programs. The thing that I'm interested in is really if that Web site is of value. I know the Treasurer and I know the senator and I like them both. And they're both characters. So I want to remove that from the topics that I am discussing today. I did have one of the individuals or two of the individuals go to the Treasurer's Web site. And it was really interesting some of the information, and I do hope that you do go to that Web site yet

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today. I did have one of my staff members pull up the one dealing with the insurance. Actually, it's pretty brief about the insurance department. It talks about the cash fund, the federal dollars, and then the total. That's it. So it gives that much information to the public. Also talks about the insurance premium tax. If you can recall, that's where we get the money to help our CHIP program. They have a nice brief description here, but there's not total. So if I'm looking at that I would not know the total. It's my understanding you can dig deeper and it would send you to some of these departments. But, again, I think no matter what we do, we need to take a look at the quality of sites that we are sending out to our constituents or the taxpayers so they can understand them. Here are just a couple of comments that they made about the state Treasurer's Web site: They describe the first page of the Web site shows a pie chart. Now, if you go to that pie chart, it clicks on, but as soon as you click off you lose that information. So they need to take a look at that. They believe that the site is not very interactive. Wherever you find a name or a list of something you cannot click on it to go deeper. You have to look around for information. There's no detailed information for any agency's budget. If you don't know the actual name used by the agency you would have trouble. I think the information is there. Now it's leading me...we need to take a look at this particular Web site to see how we could improve it. The idea behind it is great. But here's some other questions they had. There are no index. There are no lists of programs. If you want to find a program... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR PAHLS: ...within an agency, there's almost no information provided. An example on the education aid: Word, \$1.2 billion. They confuse you with annual and fiscal years. You can see that's important. Again, there are several other suggestions. So what I'm thinking about, what this has caused me to do to not only say where does this...or under whose direction this particular Web site should be. We do need to take a look at this. And, also, I'm hoping some of the state agencies, they'll start thinking about including in their Web site some of the information so when people go right to that, they would know exactly how much money is being spent and how it's being spent. How much revenue you're bringing in and how much is going out. I do think that would be good information for people to have at their hands. Again... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR PAHLS: Thank you. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Friend, you're recognized. [LB16]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. There have been a lot of moving parts out here on the floor. Let me try to sum up my thoughts.

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There is this idea of a compromise. Okay. And here's what it sounds like to me. The state...and this amendment, what it does is it essentially says we're forcing the Treasurer to take name, picture, you know, logo, junk like that off. All right. You know, I mean I don't know how you can...okay. I guess. It also, the underlying bill, AM1431, also transfers still the duties over...the management duties and the organization duties over to the Treasurer's Office. Now, we have to talk about this after this bill if we actually get to it and that's an appropriation. All right. So this could go on for a while because I think some out here would feel like, whoa, they already have a Web site. Why do they need more money? Well, all I'm doing it amending the appropriations, sending it over the Treasurer's Office as opposed to the Legislative Council. We can talk about that later. I think the amendment AM1469 is tolerable, I guess. My main concern is what it always had been, what branch of the government is actually managing this. And I think it's appropriate based on statute and based on the constitution that the Treasurer's Office does. What I have a little bit of an issue with is, a little bit, is what Senator White was talking about earlier. Once we force them to do this, we want to manage the content too? Members of the Legislature, all we're doing is taking the original bill that moved from General to Select File and changing it. And we're saying the Treasurer will do it. So any level of depth or information that we as taxpayers are going to receive would theoretically be the same as the Executive Board would end up providing for us as a state. So here's my approach or here's my attitude about it. This bill is good enough when the Exec Board was going to run it. Now it's just evil because the Treasurer wants it. Well, look, in the spirit of compromise I think AM1469 should be adopted. But you know what? I'm not saying my patience is wearing thin, but I mean this bill, it was a lovefest on General File. It was a lovefest on General File over this bill. Transparency was the code word. Give me a break. Transparency is a code word as long as the right people are operating the transparency. That's why I'm losing my patience a little bit. And it's not a political fight with me. I don't care about Shane Osborn. I don't care about the current members and politically the current members of the Exec Board. They're a political body too. I read from the very outset my thought process in regard to the statutes, in regard to the constitution. This is a Treasurer's job. So in the spirit of compromise, yeah, let's tell the Treasurer because he's big and evil that we don't want his name and picture and everything else on the board. Fine. Let's do that. But don't tell me we as a Legislature don't have this same type of political ambitions and attitudes. I like Senator White. You wouldn't know it at the end of this day, but I really do. He and I get along. You know what? I feel like I can walk up to him and tell him these things. I feel like I can do this on the mike to him because I disagree. And I think the only reason we're stuck on Select File... [LB16]

PRESIDENT SHEEHY: One minute. [LB16]

SENATOR FRIEND: Thank you, Mr. President. The only reason we're stuck on Select File trying to move a bill with a pretty logical amendment, as far as I'm concerned, is for political reasons. Now, I'm a political beast, too, and I've done political things. But I can

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assure you this is not of a political realm. Do I like pulling up spending.com or Nebraskaspending.com or whatever and seeing...Treasurer Osborn is a good enough looking guy, I guess, but I'm not enamored with that photo either. I don't care about it. I care about the Treasurer's Office. It's a constitutional office that's existed virtually as long as the Legislature itself. That's all I have right now. I would ask I guess for the adoption of AM1469, eventually adoption of... [LB16]

PRESIDENT SHEEHY: Time, Senator. [LB16]

SENATOR FRIEND: ...AM1431. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator White, you're recognized. [LB16]

SENATOR WHITE: Question. [LB16]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB16]

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate. [LB16]

PRESIDENT SHEEHY: Debate does cease. Senator McCoy, you're recognized to close on AM1469. [LB16]

SENATOR McCOY: Thank you, Mr. President, members of the body. Again, I would ask for the adoption of AM1469 and also AM1431. I believe we've reached the conclusion that our constituents would want us to reach. And that is that we care about transparency and accountability. We care about it more than political ambitions or partisan bickering, and I believe that's a success that every one of us should be proud of. And I would ask for your support on the amendment. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator McCoy. You have heard the closing. The question before the body is on the adoption of the amendment to AM1431. We're voting on AM1469. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB16]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the amendment to the amendment. [LB16]

PRESIDENT SHEEHY: AM1469 is adopted. We will now return to floor discussion on AM1431. Members requesting to speak: Senator Hansen, followed by Senator Langemeier, Senator Pahls, Senator Carlson, and Senator White. Senator Hansen,

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you're recognized. [LB16]

SENATOR HANSEN: Senator McCoy, could I ask you a quick question I guess? [LB16]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Hansen? [LB16]

SENATOR McCOY: Yes. [LB16]

SENATOR HANSEN: Could you tell me one more time about the amendment we just voted on and what it does? It took the Treasurer's picture off the Web site. Off of which Web site I guess? I mean, we called the question real quick, so. I was in the queue. So I'm going to ask some of these dumb questions I guess. What did we just do? Go ahead. [LB16]

SENATOR McCOY: Well, we removed the name and the Treasurer's image and the Treasurer's seal or a welcome message from a Web site that would talk about...paid for by taxpayer dollars that would talk about where those dollars are going just to make certain that this is about what it is, and that's transparency. [LB16]

SENATOR HANSEN: Does this create a new Web site then? [LB16]

SENATOR McCOY: No it doesn't. This would be... [LB16]

SENATOR HANSEN: Senator McCoy, that's fine. Thank you, Mr. President. I think we've neutered this bill good enough. Thank you. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Langemeier, you're recognized. [LB16]

SENATOR LANGEMEIER: Question. [LB16]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB16]

CLERK: 30 ayes, 2 nays, Mr. President, to cease debate. [LB16]

PRESIDENT SHEEHY: Debate does cease. Senator Friend, you're recognized to close on AM1431. [LB16]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. It's been a long couple of days and I won't take long. As a matter of fact, I'm going to give Senator White a little bit to time, too, because he...in fairness I guess I would consider

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this in a lot of ways a hijacking. I've done it before when I've been here. I hope to do it here in a few minutes on AM1431. But I don't consider it the type of hijacking that a lot of other folks might consider it, and let me explain real quick. I didn't just get passionate because, you know, I felt like things went awry here. I got passionate because I did some study and I really feel like this was the right thing to do. And sometimes it can be perceived as hijacking when you feel like everyone of us, by the way, has the opportunity to do so when you feel like things might be going in the wrong direction. I didn't feel like the Legislature should have this charge. It's as simple as that. So call me a pirate or all me whatever you want and that's fine. I don't even know if this is going to pass because I haven't taken a vote count because I don't do that, even if I'm trying to hijack something because quite frankly I don't care. I have an attitude and an idea. I shared it with you. I was somewhat passionate about it, probably too passionate and now we are where we are. Just as passionate as Senator White and it's his bill and it's a priority measure. I think the Treasurer has responsibilities. I don't care who the person is. I read them out onto the record about what some of those responsibilities are and they fit to a T what a Web site...how they should be charged in dealing with the type of things they should be charged with including a Web site. That's it. I don't think the Legislature should deal with this. It's not our job. Mr. President, how much time do I have remaining? [LB16]

PRESIDENT SHEEHY: Two minutes thirty-five seconds. [LB16]

SENATOR FRIEND: Senator White, I will surprise you with how much time you'll get. The thing that I think we have to leave with that's fairly important is that all of us understand the need for transparency. We understood it on General File, now we're having a little of trouble understanding it right now. We're not changing anything. All we're doing is saying you have management responsibility now, not you. I'd like to give the rest of my time to Senator White. Thank you. [LB16]

PRESIDENT SHEEHY: Senator White, you're yielded 2 minutes. [LB16]

SENATOR WHITE: Thank you, Mr. President. I want to thank Senator Friend and many other senators, Senator McCoy, Senator Flood for their courtesy. Senator Nordquist, Senator McCoy for their help in reaching this. This is not what I would have wanted originally. And it's not necessarily what I still think is ideal, but that's the nature of what happens on the floor. You run into people with different ideas. And if you do it right, it's not about just getting your idea, it's about trying to find the best combination of ideas. Whether that is this or not I don't know, but I do know that at this point AM1431 offers some advantages. The Treasurer has said that he can run it much more efficiently, we can have savings. And, you know, if we've made it impossible for anyone individual to abuse it for personal end, we've said everything should be reported, it should be transparent. I have to accept Senator Friend that the Treasurer will operate in good faith. I hope he will. And therefore I...not because it's my way because it's not, but I

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support AM1431 and I will vote for it. And then I will vote for LB16 as amended. And I hope you will do the same. Thank you. [LB16]

PRESIDENT SHEEHY: Thank you, Senator White. Thank you, Senator Friend. You have heard the closing. The question before the body is on the adoption of AM1431 to LB16. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB16]

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of Senator Friend's amendment. [LB16]

PRESIDENT SHEEHY: AM1431 is adopted. We will now return to floor discussion on LB16. Members requesting to speak are Senator Carlson, Senator White, and Senator Haar. Senator Carlson, you're recognized. [LB16]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I speak now as perhaps the most technologically challenged member of the Legislature. I voted for AM1469. I voted for AM1431. And I'm about to vote for LB16. And at the risk of blowing the lid off a powder keg I'd like address a question to Senator White. [LB16]

PRESIDENT SHEEHY: Senator White, would you yield to Senator Carlson? [LB16]

SENATOR WHITE: No problem at all, Senator, I'll light your fuse. [LB16]

SENATOR CARLSON: Senator White, after what we voted on... [LB16]

SENATOR WHITE: Yes. [LB16]

SENATOR CARLSON: ...and we're about to go to Final Reading,... [LB16]

SENATOR WHITE: Yes. [LB16]

SENATOR CARLSON: ...how do I get to the Web site? (Laughter) [LB16]

SENATOR WHITE: Which one? The one that's there now? [LB16]

SENATOR CARLSON: The one that we're going to have. [LB16]

SENATOR WHITE: Oh, well, the Treasurer will tell us that, Senator. We're entrusting him. [LB16]

SENATOR CARLSON: All right. Now, how will all of the rest of us find that out? [LB16]

SENATOR WHITE: Well, we hope that the Treasurer will tell us, but actually you'll go to

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Nebraska.gov and you'll look for something to do with transparency, I hope. And because the Web site...in the bill says, "Web site shall be hosted on a server owned and operated by the state of Nebraska or approved by the Chief Information Officer. The naming convention for the Web site shall identify the Web site as a state government Web site." So you go to the state of Nebraska and you'll look, you know, in the index of Web sites and look for what I hope will say Nebraska transparency or the Nebraska people's checkbook.gov. I hope it says something just neutral. [LB16]

SENATOR CARLSON: Okay. Now, with Senator McCoy's amendment we don't have the Treasurer's name, we don't have the picture, we probably don't have anything else on there. So if I get to that Web site and have a question, how will I know who to contact? [LB16]

SENATOR WHITE: Oh, they can have a statement on the bottom, hosted by and if you have problems or questions, contact. That will be on there. [LB16]

SENATOR CARLSON: So somebody like me will be okay with that. [LB16]

SENATOR WHITE: Well, I cannot attest to your abilities in the computers, Senator, even with all the help in the world. (Laughter.) [LB16]

SENATOR CARLSON: Thank you, Senator White. Thank you, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator White, you're recognized. [LB16]

SENATOR WHITE: Question. [LB16]

PRESIDENT SHEEHY: The Chair rules the call for the question out of order. It's not necessary. No further members requesting to speak, Mr. Clerk. No further action on the bill, Mr. Clerk? [LB16]

CLERK: I have nothing further, Mr. President. [LB16]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nordquist, you're recognized for a motion. [LB16]

SENATOR NORDQUIST: Mr. President, I move LB16 to E&R for engrossing. [LB16]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed nay. LB16 advances. We will now proceed to LB16A. [LB16 LB16A]

CLERK: LB16A, Mr. President. I have no E&Rs. The first motion I have to the bill,

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Senator Friend, AM1383. (Legislative Journal page 1501.) [LB16A]

PRESIDENT SHEEHY: Senator Friend, you're recognized to open on AM1383 to LB16A. [LB16A]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This is what I was talking about earlier, if you were listening. If you recall LB16, there's an A bill associated with it and that's where we're at right now. And you recall how much it was. Well, if you look at your monitor on page 2 line 2 we strike "Legislative Counsel" and insert "State Treasurer" in line 3; strike "122" and insert "503." Those are the agencies. Now, where do we go with that? Two schools of thought here. And I see Senator White will probably speak to this too, but two schools of thought. There is a Web site already in place that the Treasurer's Office manages. I think I misspoke earlier. Senator Carlson actually brought this to my attention. I think I was saying that it was about \$1,200 or \$1,300 a month, it's actually a year. So if I did misspeak, I wanted to correct that for the record. So approximately, approximately \$40,000 to get that Web site started, Nebraskaspending.com and about \$1,200 or \$1,300 a year in the maintenance. So the school of thought is, well, they already have one. All the stuff that we've applied in LB16 you just transfer it over to the State Treasurer, transfer those duties. Right? Create those duties, move those duties over. Here's the problem: If we needed the money just for starting the Web site on General File, if we needed that much money just for starting a Web site, I would say right now you don't need the A bill. If...and we have to be honest with ourselves here and, again, I understand a little bit about creating Web sites, enough to be dangerous. If we need it for the expanded...we have a portal, if we need it for the expanded capability, interactivity, information and extra software, then we've got a problem. And we're going to have to appropriate something. Now, again, I think people have some ideas about this. My thought process is this has already been whittled down. I don't know if Senator Heidemann would have a thought. I don't know who else would. I'd be happy to listen to it. But here's what I can tell you and I'll wrap up: I think they're going to need expanded capability. I think they're going to need more money. And I don't say that lightly. We can make this A bill go away. We've made other A bills go away. That's fine. But I'm telling you if we give them what we've given them, the same with the Exec Board...yeah, and let me get to one more quick point here. I had an issue with the A bill, maybe an issue with the A bill anyway for the Exec Board. I don't know that it's enough money. We're asking for expanded capability that I don't know if that amount of money we'd be able to cover. I'm not sure. So here's my recommendation. Just a thought and you guys tell me if I'm crazy. You're going to...no, don't tell me, just do it. I say we move the A bill the way it is. And then if people have problems with it between now and Final, I think we get together...and, again, we'll get Senator White's comments in a second, I think between now and Final, if people have problems with it or we talk to the Treasurer's Office or we communicate, you know, further with some of the parties involved and find out that either that money is just not going to be enough or it's...look, if this amount of money right here is not enough either

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for the Exec Board or for the Treasurer, it's not enough. If we don't need it because they already have a Web site, then let's get rid of the A bill. My recommendation would be we just move the A bill because if it was good enough for the Exec Board to try to manage this even though they had some startup costs associated with it, it's probably good enough for the Treasurer's Office to expand. Now, again, Senator White may disagree. Let's find out. Thank you, Mr. President. [LB16A LB16]

PRESIDENT SHEEHY: Thank you, Senator Friend. You have heard the opening of AM1383 to LB16A. Members requesting to speak: Senator White, followed by Senator Friend and Senator Pahls. Senator White, you're recognized. [LB16A]

SENATOR WHITE: Thank you, Mr. President. I completely disagree with Senator Friend on this. The whole point of this debate was there were two main arguments. One is it was the constitutional duty of the Treasurer, and two, he already had a site up, it was running, and it would save us money. Okay. You can't have it both ways. Now, he wants \$100,000 to do it himself when just moments ago we were saying it was a waste of money. Not going down that road, folks. Born at night, but not last night. Let's talk, okay. What did the Treasurer say? And this is the journalstar.com, the Treasurer said that he said first: after all, he said, but Osborn who calls his spending site "the most comprehensive in the country," thinks he's the better man for the job relying on the Legislature to publicize how it spends money--and, again remember, we don't spend money, we appropriate it--he said would be like having the fox guard the hen house. "I'm an independent constitutional officer that has no role in approving spending," said Osborn. White's bill would give Osborn the chance to maintain the Web site. No thanks, says Osborn, he'll stick to running his own site which he's described as the most comprehensive in the country. Creating the chance that he and the lawmakers will be competing for Web surfers hungry for information on where their tax dollars are spent. Okay, well, wait a minute. We're not going to double the sites now. The Treasurer will have this. And what did Osborn say? This was a quote, the most expensive part of launching the Web site would be compiling the information. But we already have \$400,000 that we have to spend according to federal regulation to report our expenditures for the stimulus package. So there's an extra \$400,000 out there already. And we had allowed for \$100,000. And I told you repeatedly we thought we'd do it for a lot less than that to start the site. People argued with that. Okay. Well, Treasurer Osborn has already got the most comprehensive site in the country up and running that cost him \$38,000 to set up and it's only going to be \$15,000 a year. We don't need the A bill, folks. And that was part of the compromise. When I listen to what people said on this floor, I assumed they meant it. We can do this cheaper. We can avoid duplication. We have an obligation to make the public's money stretch. Okay. The Treasurer says he can do this, he can do it better, and he's already got the most comprehensive site in the country. Got it. We don't need the A bill, folks. There's \$400,000 available now that wasn't there to assemble the data to put on his already existing site. There is absolutely no need for any A bill, and my good friend Senator Mello has an IPP motion that will

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follow as soon as this motion is debated, and I'm going to urge you to support it. It is not necessary. That's one of the reasons I compromised. I heard the body say we don't want duplication. We want efficiencies. We want taxpayer dollars. This already exists, don't duplicate it. Okay. Let's not pay for duplicating it. It's already there. I took him at his word. Thank you, Mr. President. [LB16A]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Friend, you're recognized. [LB16A]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. All right. Fair enough. See how easy I can be. Let's get something clear though, let's get something straight. We just debated this for three hours. I didn't talk about the cost. I told you we'd talk about it after we got done with that debate. So with all due respect to...I don't know if he was referring to me, he might not have been. During that last debate I didn't tell you how much it was going to cost. I told you it would probably be cheaper for the Treasurer to run it overall because they've got some people in place and they've got a portal. But I didn't tell you they wouldn't need money, so let's get that clear. However, yeah, let's kill the A bill. I'm fine with that. Anytime somebody has the attitude that they want to kill an A bill, 99 percent of the time I'm going to go...well, 99 percent, the 1 percent it probably has my name on it. This AM1383 is an A bill with my name on it and that's 1 percent of the time. But I guess I agree with Senator White. I think maybe with the portal there, with the portal there and even with, even with the expanded intricacy that we're requiring, I think there's a good chance it can be accomplished in a manner that the people of Nebraska want it accomplished. So I just made a recommendation. I really don't care. Kill it. Let's move on. Thank you, Mr. President. [LB16A]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Pahls, you're recognized. [LB16A]

SENATOR PAHLS: Thank you, Mr. President. I always think of sunsets, but now we're into killing. (Laughter) The issue that I have with this...and I do understand the Office of the Treasurer has high regards for this particular Web site. But, again, I must tell you that I've had people go to it and said they needed more help. And I understand we're...and we need this all the time when we're developing Web sites, so I don't think we necessarily ought to be satisfied. This is not being critical of that particular Web site, but we must make it so people can go to it and find the information they want, not necessarily us. I'm just saying if I want to go there for the insurance, I can find out a few statements about how much money the Insurance Department gets and I can find out a little section dealing with their premium tax. Unless I'm doing this wrong it's hard for me to find more information. I'm looking for more detail and that's my perhaps future view is we need to have a Web site that people can go to whether it's this added on, another one. We do need something that just like that you can find out. Too many of the

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Web sites that I've gone to right now...and I'll just speak to the one in education. They have an awful lot of good material on there. It's unbelievable. But you really have to really want to get to that material. So I'm asking people to think about that. I know this is going to be killed, but we need to think about what the public wants or need. Again, I'm just making this one for the agencies. The people told me that your sites were very consumer-oriented. But one thing they did not find out on was your budget. And I don't think it would be that hard for you to put that on there and describe the number of people who work there, etcetera, etcetera. I do think that that would be one additional plus for Nebraska state government. I thank you. [LB16A]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Friend, followed by Senator Pirsch. Senator Friend, you're recognized. [LB16A]

SENATOR FRIEND: Thank you, Mr. President. I'd like to withdraw AM1383. [LB16A]

PRESIDENT SHEEHY: AM1383 is withdrawn. Mr. Clerk, you have a motion on your desk. [LB16A]

CLERK: Mr. President, Senator Mello would move to indefinitely postpone. Senator White, you would have the option of laying it over or taking it up at this time. [LB16A]

PRESIDENT SHEEHY: Senator Mello, you're recognized to open on your motion to indefinitely postpone. [LB16A]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. In regards to the conversation that you've heard today from Senator Friend and Senator White, the compromise that Senator McCoy and Nordquist and Flood put together, it's apparent that the overwhelming argument was that the Treasurer can do the site knowing that what we just pass in LB16 is just reaffirming a transparency Web site in statute that is already being done. So with that being said, my motion to indefinitely postpone is simply saying that there's no money needed to do something that's already being done which is roughly, I think Senator Friend mentioned, about \$1,500 a year or so in the budget that the Treasurer requests to update the Web site. I think it's fiscally prudent for us that he's made the claim he can do it on the cheap. He can do it existing as it is now that I think we honor his request. And that is what essentially this IPP motion does. With that, Mr. President, I'd like to yield the remainder of my time to Senator White. [LB16A]

PRESIDENT SHEEHY: Senator White, you're yielded 9 minutes. [LB16A]

SENATOR WHITE: Thank you, and we won't use much of us. We need to be careful with our money. And one of the reasons I accepted the discussion, the debate, though I wasn't pleased with it, certainly not initially is \$100,000, if we can save it, it's a lot of

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money, let's save it right now, folks. I strongly recommend you IPP LB16A, and then we will advance...I will ask that LB16 be written into law. Thank you. [LB16A]

PRESIDENT SHEEHY: Thank you, Senator White. Thank you, Senator Mello. Members, requesting to speak on the motion to indefinitely postpone: Senator Lautenbaugh and Senator Friend. Senator Lautenbaugh, you're recognized. [LB16A]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and I'll be brief. I do trust the Treasurer to do this and do it right. And the representation is made that the \$400,000 will fund a lot of this. So be it. If we can get by without spending an extra \$100,000, that's money well-saved I guess is the best way to put it. I just want to be very clear that I believe the existing A bill was based upon...I don't want to say guesstimates, but well, okay, guesstimates. And if this covers it, that's great. If we can do it for less than \$400,000, I'm confident the sheriff...Treasurer will do it and we'll move on. So I guess I rise in support of the motion to IPP. I trust the Treasurer to proceed in good faith. I know he'll do it economically. And, you know, if we have to tweak this in the future, so be it. I'll yield the rest of my time to Senator Friend. [LB16A]

PRESIDENT SHEEHY: Senator Friend, you're yielded 3 minutes 50 seconds, and you're next in the queue. [LB16A]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. Everybody wants to leave. I understand that. I'm going to make a point. I know what's going on. I didn't just fall off the turnip truck. I'm going to vote to indefinitely postpone this. That's great. So Senator Mello gets over. Congratulations. (Applause) Yeah. You know what? We got the Treasurer to get his name off of the Web site. That's what we sought to do from the very beginning. We win! Congratulations, folks! Here's proof positive: I meant what I said and I know that we're doing the right thing. It doesn't matter where the money is going and it doesn't matter whose names are on Web sites. I didn't want the Legislature managing a Web site like this. I'm going to vote to indefinitely postpone this because I'm not doing anything in here on this particular item for political reasons. I don't know that the Treasurer is going to have enough money to do the expanded things that he needs to do now because the bill asked for expanded things. And the bill originally for the Exec Board had an A bill. We needed the A bill on General File, didn't we? Nowhere in this conversation in the last two and a half hours did I tell you that we don't necessarily need an A bill. But I'm going to vote to kill it because I really don't care who gets over. So to sum up, the Treasurer now has a responsibility. He can't show his face. He can't show his name because a bunch of people don't like him. (Applause) Thank you, Mr. President. [LB16A]

PRESIDENT SHEEHY: Thank you, Senator Friend. Do you wish to use your time? [LB16A]

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SENATOR FRIEND: No. [LB16A]

PRESIDENT SHEEHY: Senator Friend waives. Seeing no additional requests to speak, Senator Mello, you're recognized to close on your motion to indefinitely postpone LB16A. [LB16A]

SENATOR MELLO: I'll waive closing. [LB16A]

PRESIDENT SHEEHY: Senator Mello waives closing. The question before the body is on the adoption of the motion to indefinitely postpone. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB16A]

CLERK: 37 ayes, 0 nays, Mr. President, to indefinitely postpone LB16A. [LB16A]

PRESIDENT SHEEHY: The motion to indefinitely postpone is adopted. Speaker Flood, you're recognized for an announcement. [LB16A]

SPEAKER FLOOD: Thank you, Mr. President, members. I know that there's a sense that we want to go home and I appreciate that. I would like to resolve LB241 in this bracket that we're in right now, and then go home and not take up LB542 given the hour that we're looking at here. So it is my intention to hopefully resolve LB241 before we leave. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, we'll proceed to LB241. [LB241]

CLERK: LB241, Senator Nordquist, I have Enrollment and Review amendments. (ER8111, Legislative Journal page 1329.) [LB241]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB241]

SENATOR NORDQUIST: Mr. President, I move the E&R amendments to LB241. [LB241]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the amendments. All those in favor say aye. Opposed nay. They are adopted. [LB241]

CLERK: Senator Dierks, AM1362. (Legislative Journal page 1401.) [LB241]

PRESIDENT SHEEHY: Senator Dierks, you're recognized to open on AM1362 to LB241. [LB241]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. This is an

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amendment that was brought to us by the Bill Drafters to just a technical change, just change the word "compensation" to "consideration" which makes it a better legal term for the legislation. It's on page 17 line 13. We strike "compensation" and insert "consideration." Thank you. [LB241]

PRESIDENT SHEEHY: Thank you, Senator Dierks. You have heard the opening of AM1362 to LB241. Seeing no requests to speak, Senator Dierks, you're recognized to close. Senator Dierks waives closing. The question before the body is on the adoption of AM1362 to LB241. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB241]

CLERK: 38 ayes, 0 nays, Mr. President, on the adoption of Senator Dierks's amendment. [LB241]

PRESIDENT SHEEHY: AM1362 is adopted. [LB241]

CLERK: I have nothing further on the bill, Mr. President. [LB241]

PRESIDENT SHEEHY: Senator Nordquist, you're recognized for a motion. [LB241]

SENATOR NORDQUIST: Mr. President, I move LB241 to E&R for engrossing. [LB241]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed nay. LB241 advances. Mr. Clerk, do you have items for the record? [LB241]

CLERK: I do, Mr. President. Senator Karpisek, amendments to LB542 and a motion with respect to LB542. An announcement, Mr. President. The Education Committee will meet tomorrow at 12:30 in Room 1107, that's Senator Adams' conference room, 12:30 tomorrow for the Education Committee. Senator Mello would like to add his name to LR172 as a coinroduced. (Legislative Journal pages 1607-1608.) [LB542 LR172]

And Mr. President, a priority motion. Senator Pahls would move to adjourn the body until Wednesday morning, May 20 at 9:00 a.m. []

PRESIDENT SHEEHY: You have heard the motion to adjourn until Wednesday, May 20, 2009, at 9:00 a.m. All those in favor say aye. Opposed nay. The ayes have it. We are adjourned. []