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Floor Debate
February 18, 2014

[LB191 LB371 LB402 LB438 LB438A LB661A LB728 LB740 LB788 LB814A LB836
LB838 LB854 LB867 LB898 LB1057 LB1076 LR434 LR435 LR436 LR437 LR438
LR439 LR442 LR443 LR444]

SENATOR KRIST PRESIDING

SENATOR KRIST: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred Third Legislature, Second Session. Our chaplain for today is Father Charles Kestermeier from Creighton University, Senator Crawford's guest. Please rise.

FATHER KESTERMEIER: (Prayer offered.)

SENATOR KRIST: Thank you, Father. I call to order the twenty-seventh day of the One Hundred Third Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: Mr. President, no corrections.

SENATOR KRIST: Thank you. Are there any messages, reports, or announcements?

CLERK: There are. Thank you. Enrollment and Review reports LB438 and LB740 to Select File. Enrollment and Review also reports LB371 as correctly engrossed. I have a new resolution. Senator Coash offers LR442. That will be laid over. New A bill, LB661A by Senator Krist. (Read LB661A by title for the first time.) And I have gubernatorial appointment letters, several appointments to the Commission on Problem Gaming and the Commission on Industrial Relations. Those will be referred to Reference. That's all that I have, Mr. President. (Legislative Journal pages 545-548.) [LB438 LB740 LB371 LR442 LB661A]

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

CLERK: Mr. President, the Nebraska Retirement Systems Committee reports on the appointment of Janis Elliott to the Public Employees Retirement Board. (Legislative Journal page 472.)

SENATOR KRIST: Senator Nordquist, you are recognized.

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SENATOR NORDQUIST: Thank you, Mr. President and members. The Nebraska Retirement Systems Committee held a confirmation hearing on February 6 for Janis Elliott. Ms. Elliott was originally appointed in 2009 to serve on the Public Employees Retirement Board as one of two members representing schools. She has been reappointed by the Governor to serve a second, five-year term. The Nebraska Public Employees Retirement Board oversees the state retirement plans. Ms. Elliott has a master's degree from UNO in science education with an emphasis in physics and has taught in Nebraska public schools since 1984, most recently in Bellevue as an honors physics instructor. She's been very active and engaged member of the Public Employees Retirement Board. She has served as chair of the policy and planning subcommittee for the Retirement Board and also as a member of the budget and personnel and education subcommittees. Her appointment...since her appointment in 2009, she has also been actively involved in pension activities at the national level. The Retirement Committee unanimously voted Ms. Elliott's appointment to the Legislature for confirmation. I would ask for your support with this appointment. Thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Nordquist. You've heard the opening on the confirmation report. Anyone choosing to speak? Seeing none, Senator Nordquist, you're recognized to close. Senator Nordquist waives. The question is confirmation. All those in favor say aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 548.) 30 ayes, 0 nays, Mr. President, on adoption of the Retirement Systems confirmation report.

SENATOR KRIST: It is adopted.

CLERK: The second report, Mr. President, from the Education Committee involves three appointments to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 487.)

SENATOR KRIST: Senator Sullivan, you're recognized.

SENATOR SULLIVAN: Thank you, Mr. President, and good morning, colleagues. The Education Committee heard three gubernatorial appointments to the Nebraska Educational Telecommunications Commission on February 3. All three are reappointments to the commission. They are J. Richard Shoemaker, Kenneth Bird, and Frederik Ohles. J. Richard Shoemaker is the president and chairman of Pinpoint Holdings, Incorporated, which is diversified telecommunications firm located in Cambridge, Nebraska. Kenneth Bird is president, chief executive officer of the Avenue Scholars Foundation. And Frederik Ohles has served as president of Nebraska Wesleyan University since 2007. The committee advanced all three appointments with a

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vote of 7 ayes, with 1 member absent. I urge confirmation of these appointments. Thank you.

SENATOR KRIST: Thank you, Senator Sullivan. The floor is open. Seeing none, Senator Sullivan, you're recognized to close. Senator Sullivan waives closing. The question is the adoption of the confirmation. All those in favor, aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 549.) 37 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR KRIST: Confirmations are adopted. Next item.

CLERK: Mr. President, the Natural Resources Committee has several reports. The first involves the appointment of Dennis Grennan to the Nebraska Power Review Board. (Legislative Journal page 510.)

SENATOR KRIST: Senator Carlson, you are recognized.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. We have an appointment for the Nebraska Power Review Board, Dennis Grennan from Columbus. He's a new appointee and is the engineer representative on the board. He has over 40 years of experience in the utility industry with NPPD and currently with HDR. He's the vice president of the Mid-America (sic--Mid-Continent) Area Power Pool. He's a member of the Columbus YMCA Board. The committee had a good question-and-answer session with Mr. Grennan and voted unanimously to recommend the approval of Dennis Grennan to the Nebraska Power Review Board and I would ask for your support. Thank you.

SENATOR KRIST: Thank you, Senator Carlson. Senator Schumacher, you are recognized.

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I rise in support of this nomination and appointment. Dennis Grennan and his wife, Coni, have lived in Columbus for 23 years. Prior to that they lived in North Platte and Lincoln. They have three grown children and nine grandchildren. Dennis has gotten 40 years of progressive experience in the electric industry and prior to joining HDR Dennis spent 32 years with the Nebraska Public Power District. He spent 20 years in generation, including plant manager at the Gentleman Station, senior manager over all the NPPD generation. His last 12 years at NPPD was in the transmission, distribution, customer service areas where he was responsible for 108,000 retail electrical customers and distribution to 200 retail communities and 75 wholesale communities and rural districts located in over 80 of the 93 counties in Nebraska and one irrigation district also which

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was providing water to 600 customers. He was also responsible for NPPD's area development and marketing activities, including capacity purchase transactions outside of Nebraska and resource planning. He's responsible for all of the customer services, including power supply contracts, transmission system operation of dispatch, retail distribution, telecommunication, and other value-added products and services. Mr. Grennan is also responsible for economic development system planning and various other support projects. Since joining HDR he has been involved with multiple energy projects, including serving as project manager and client manager. He has also provided direction in the expansion of the energy program at HDR primarily in the areas of organization and communications. I would urge the body to support and vote green on this particular appointment. Thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Schumacher. Seeing no others wishing to speak, Senator Carlson, you're recognized to close.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And thank you, Senator Schumacher, for your words of encouragement concerning Dennis Grennan. And I do ask for your support of his appointment to the Nebraska Power Review Board. Thank you.

SENATOR KRIST: Thank you, Senator Carlson. You've heard the closing. The question is the adoption of the confirmation report. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 549-550.) 41 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR KRIST: The report is adopted.

CLERK: The next report, Mr. President, by Natural Resources involves the appointment of Mr. Rex Fisher to the Game and Parks Commission. (Legislative Journal page 511.)

SENATOR KRIST: Senator Carlson, you're recognized.

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. We do recommend the approval of Rex Fisher for the Nebraska Game and Parks Commission. He is a reappointee and is the at-large member of the commission. He worked for Northwestern Bell for 30 years, currently is senior vice president at HDR. He serves on several boards, including the Greater Omaha Chamber of Commerce, the Nebraska State Chamber, the United Way of the Midlands, and the Children's Hospital Foundation. He has been active in community affairs for many, many years. He's an avid hunter and very interested in the work of the Nebraska Game and Parks Commission and is a proponent of the various things that they do. The committee vote

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was unanimous. We had, again, a good session with Mr. Fisher and we ask for your support. Thank you.

SENATOR KRIST: Thank you, Senator Carlson. Senator Murante, you're recognized.

SENATOR MURANTE: Thank you, Mr. President, members of the Legislature. I rise in support of Rex Fisher's confirmation. Mr. Fisher is a constituent of mine, along with a longtime family friend of my family. Mr. Fisher and my grandfather go back a long ways in the philanthropic world of charities particularly targeted at the disabled community. He's a good person. He's a good constituent in Sarpy County and I think he would be a great addition to this board. So thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Murante. Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I support this nomination also, primarily because I made a mailing to all of the commissioners on the Game and Parks Commission and I want to be certain that Mr. Fisher is still there when the mailing arrives. Thank you.

SENATOR KRIST: Thank you, Senator Chambers. Seeing no one else wishing to speak, Senator Carlson waives his opportunity to close. The question is the adoption of the confirmation report. All those in favor, aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 550.) 34 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR KRIST: The report is adopted. (Doctor of the day introduced.) (Visitors introduced.) Next item, Mr. Clerk.

CLERK: Mr. President, the General Affairs Committee has several reports. The first involves two appointments to the State Electrical Board. (Legislative Journal page 528.)

SENATOR KRIST: Senator Karpisek, you're recognized.

SENATOR KARPISEK: Thank you, Mr. President, members of the body. The General Affairs Committee voted 8-0 to approve the reappointment of George Morrissey and Stan Elsasser to the State Electrical Board for five-year terms. George Morrissey lives and works in Omaha as a self-employed engineer and he fills the role of the registered electrical engineer on the board. Stan Elsasser is the current vice president of the Electrical Board and he fills the role of licensed journeyman electrician on the board. He lives in Bellevue and is employed as assistant business manager at IBEW 22 in Omaha. I urge your support of their reappointments. Thank you, Mr. President.

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SENATOR KRIST: Thank you, Senator Karpisek. Seeing no one wishing to speak, Senator Karpisek waives his opportunity to close. The question is the adoption of the confirmation report. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 551.) 34 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR KRIST: The report is adopted.

CLERK: Mr. President, second report from General Affairs involves three appointments to the Nebraska Arts Council. (Legislative Journal page 528.)

SENATOR KRIST: Senator Karpisek.

SENATOR KARPISEK: Thank you, Mr. President, members of the body. The General Affairs Committee voted 8-0 to approve the reappointment of Mark Laughlin to the Nebraska Arts Council to serve his second three-year term. Mark is an attorney with the Fraser Stryker law firm in Omaha and was first appointed to the Arts Council in 2011. He has served on the Omaha Community Playhouse Board of Trustees since 1998 and is currently the president. He is very qualified to serve another term and I urge you to approve his reappointment. The committee also voted 8-0 to approve the new appointments of Candy Henning and Melissa Marvin. Candy lives in Lincoln and is involved extensively in the arts through her service with the Lincoln Community Foundation, the Sheldon Art Association, MONA, and the Lied Center Advisory Board. She is self-employed as a broadcast advertising sales representative and she and her husband also operate a farm that is dedicated to preserving upland game birds. Melissa Marvin lives in Omaha where she works with the Cohen Brown Management Group and is the director of community engagement for Metropolitan Community College. She serves on the boards of the Nebraska Cultural Endowment, Nebraska Shakespeare, Omaha Theatre Company, and the Joslyn Art Museum Association. Both of these ladies will bring great energy and passion to the Arts Council and I urge your...I urge you to approve their appointments. Thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Karpisek. Senator Cook, you are recognized.

SENATOR COOK: Thank you, Mr. President, and good morning, colleagues. I rise in support of all of the nominees for the Nebraska Arts Council. Arts are something that I think we should do more in terms of prioritizing in the state of Nebraska in terms of our participation and our state support. I rise more specifically to offer kudos to the committee for advancing the nomination of my friend Melissa Marvin. She has been very, very active in a number of nonprofits and arts organizations across the state for

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many years, and I think that she will do a wonderful job as a new appointee to the Nebraska Arts Council. Thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Cook. Seeing no one else, Senator Karpisek waives his opportunity to close. The question is the adoption of the confirmation report. All those in favor, aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 551-52.) 29 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR KRIST: The report is adopted.

CLERK: The final confirmation report this morning involves the General Affairs report on Mr. Edward Hoffman to the Nebraska Commission on Problem Gambling. (Legislative Journal page 528.)

SENATOR KRIST: Senator Karpisek for the trifecta.

SENATOR KARPISEK: (Laugh) Thank you, Mr. President. The General Affairs Committee voted 8-0 to approve the appointment of Ed Hoffman to the Nebraska Commission on Problem Gambling. Ed works as an attorney at the Cada Law firm in Lincoln, and he will serve as the legal expert on the commission. He has been one of the members of the HHS State Committee on Problem Gambling and will be able to provide much-needed continuity to the new commission. I urge your support. Thank you, Mr. President.

SENATOR KRIST: Thank you, Senator Karpisek. Seeing no one wishing to speak, Senator Karpisek, you're recognized to close. Senator Karpisek waives closing. The question is the adoption of the report. All those in favor, aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 552.) 31 ayes, 0 nays, Mr. President, on the adoption of the report.

SENATOR KRIST: The report is adopted. Next item.

CLERK: Mr. President, an A bill. Senator Adams offers LB438A. (Read title.) [LB438A]

SENATOR KRIST: Senator Adams, you're recognized. [LB438A]

SPEAKER ADAMS: Thank you, Mr. President. Members, this is the revised fiscal note that recognizes the committee amendment that was adopted last week to LB438.

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Essentially what it does, it allows for one FTE at the Department of Ed that will oversee this process of priority schools and, secondly, the anticipated expenses for intervention team. Thank you, Mr. President. [LB438A LB438]

SENATOR KRIST: Thank you, Speaker Adams. Seeing no one wishing to speak, Speaker Adams waives his closing. The question is the advancement of LB438A to E&R Initial. All those in favor, aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB438A]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB438A. [LB438A]

SENATOR KRIST: Senator Murante for a motion.

CLERK: Senator, with respect to LB838, I have no amendments to the bill. [LB838]

SENATOR KRIST: Thank you. Senator Murante for a motion. [LB838]

SENATOR MURANTE: Mr. President, I move to advance LB... [LB838]

SENATOR KRIST: Stand by, Senator Murante. I'm sorry I missed you in the queue, Senator Lautenbaugh. You're recognized. [LB838]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I do not wish to speak against the advancement of this bill on Select File and I'm not going to. But I did want to be heard one last time...well, that's misleading. I wanted to be heard again on issues of education. And we're all here today and still focusing. In my district, OPS, student proficiency in reading and mathematics, if you look at all students, 62 percent proficient in reading, 48 percent in math. If you look at white students, 78 percent proficient in reading, 66 percent in math. If you look at black students, 48 percent proficient in reading, 30 percent in math. If you look at Hispanic students, 57 percent in reading, 44 percent in math. Spending again is not the issue. If you adjust for inflation, in 1990 we were spending under the national average. In 2010, we were spending over the national average and our scores have lagged. Despite spending more, we've gone from keeping pace with the national average to doing generally worse than the nation. In '92, looking at fourth grade, in reading white students were pretty much equal to the national average; black and Hispanic students performed better than the national average in reading. In 2013, white students are now worse than the national average; black students are now worse than the national average; Hispanic students are essentially the same. What that means is we've lost ground vis-a-vis the national average in reading in all categories. In mathematics, looking at eighth grade, in 1992 white and Hispanic students were better than the national average; black students were equal to the national average. In 2013, all students in Nebraska are worse than the national average. Black students in particular are tied with Alabama for dead last in

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the nation. Think on that for a minute. In '92, black students in Nebraska were equal to the national average. Now we're dead last, tied with Alabama. Now keep in mind what that means in the larger picture because, if you listen to the President, a strong advocate of education reform, including charter schools and several other measures, he is sounding alarm bells at the national level because our nation is falling behind the world in education. And Nebraska is falling behind the nation in education, so it's not just that we're losing ground against a rising nation. Our nation is losing ground against the world and we're losing ground against the nation despite spending more. I can't make this any plainer. So when you hear people running for statewide office saying how great our schools are, you're being misled. Our schools are not doing great. We are losing ground vis-a-vis the world and vis-a-vis the nation. We are losing ground in Nebraska. [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR LAUTENBAUGH: This is intolerable, or it should be, but for the fact that we're tolerating it. So it seems to be tolerable. And I'm sorry to keep hammering on this, but this is bad and it's getting worse, I would argue. And spending more hasn't helped; spending more hasn't helped yet. We need a new approach. Thank you, Mr. President. [LB838]

SENATOR KRIST: Thank you, Senator Lautenbaugh. Senator Mello, you're recognized. [LB838]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I only stand up to make sure that, yes, I think we can agree, Senator Lautenbaugh, that our education system needs improvement. But if you continue to give a partial story to what is currently happening in the state of education, then I will stand up every time you talk and remind the body and the state at large of the other aspects you refuse to acknowledge. We passed a No Child Left Behind federal accountability system in Washington, D.C., in the early 2000s, which you did not mention in your litany of selected facts that you used. That was not funded, by the way. If you heard people on both sides of the aisle complain, when you create a new accountability system and simply give it to the states and say, do this, without saying how you're going to fund it and, one, whether or not states can fully abide by it, that's a different policy issue. The other component that, yes, spending has increased in education, but per pupil we're ranked one of the last states in the country in regards to the amount of state aid to education as it is given to students per capita. We rank 49th in the country actually when it comes to state aid to education from the state level per capita. So the issues you raise I don't disagree, but this is a bigger policy issue that we need to discuss as it relates to the Omaha school districts that I represent, not simply the district at large, but the schools in southeast Omaha that have the challenges that we're talking about. We have very low property valuations in Omaha Public Schools in comparison to a lot of

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other school districts. So there is a policy consideration we can talk about as it relates to school financing outside of simply talking about where students may be at on No Child Left Behind test scores. But as we discussed this last week, I don't think there is a dramatic disagreement that Senator Lautenbaugh and myself have in respects to our education system needs to improve. It does, dramatically, but simply saying that it needs to improve and money is not an option and poverty is not the sole reason why, it only gives, colleagues, half the story. I don't need to remind the body of the very detailed explanation I gave last week of meeting with south Omaha schoolteachers, not administrators, teachers who said the biggest challenges they're facing in the classroom of trying to help low-income students achieve academically in the classroom is their lack of access to mental healthcare. Senator Lautenbaugh didn't mention that again today. So, yes, poverty is an issue we can both agree on, but it's not simply poverty, colleagues. It's access to healthcare; it's access to a warm meal or a full meal, breakfast, lunch, and dinner. As Senator Conrad said last week, it's not commonsense to know that if a student comes to a classroom hungry, they're not going to learn as well as a student who would come in fully prepared, clothed, fed, and ready to learn. So I mean, I think that we're not two passing ships in the night, so to speak, but every time Senator Lautenbaugh stands up and says that our schools need improvement, I will agree with him. But I will make sure that every time he does that I will provide another counterpoint in the sense that not giving our children access to mental healthcare is a problem in regards to meeting standardized test scores. It's a problem in the sense of trying to have students meet accountability standards when students don't speak English. Those are issues that we can't simply say we'll fix them if we simply create charter schools. I just don't think that's a reality. Now I'm all open...I'm always open-minded to looking at policy considerations as it relates to education. But for us not to have a comprehensive view of the real problems facing children in our classrooms, we would be doing a disservice to taxpayers if we don't have the honest conversation about what really is facing children as they're trying to learn, not just in Omaha Public Schools, not just in south Omaha,... [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR MELLO: ...not just in north Omaha, but statewide. And the issues of access to healthcare and accesses to quality nutrition are issues we've heard in the six years I've been here. And those issues aren't going away with the creation of charter schools; they're not going away with the creation of an independent school; they're not going away right now putting more money in TEEOSA. We know that. So let's have a real dialogue. If we want to talk about education reform, let's talk about those other issues then. Let's bring the Health and Human Services Committee, the Education Committee, the Appropriations Committee, any senator who wants to try to tackle the tough issues, not simply saying that if they're not meeting standardized test scores then we've got to throw the baby out with the bathwater. That's not an approach that we should be considering. If we want to look at comprehensive reform efforts, let's have the real

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dialogue and conversation about the other aspects of learning that we know has a direct impact on children in our public school system. Thank you, Mr. President. [LB838]

SENATOR KRIST: Thank you, Senator Mello. Senator Chambers, you are recognized. [LB838]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Lautenbaugh reminds me in some respects of myself when it comes to constantly hammering away on the problems in education, but we might have a different idea as to the solution. I will never support charter schools unless something alters drastically. The vast majority of poor black children, poor white children are going to go to the public schools. I don't like the idea of setting aside one building where extra effort is going to be put forth to educate these children and the vast majority of the children so situated will not have access to it. I have to look at the fact that the public school systems, the public education system is in place. It is where the vast majority of children are going to be educated, so I have to do all that I can to try to bring up all of that system so that in every classroom in every building in every school district in every city in this state offers the children who are in that classroom an opportunity to obtain a quality education. And while comparisons are made based on test scores, my view is that no children in Nebraska are getting a decent education. When the high category in any area is 70-something percent, that is failing. That is not good. And when the only time you can make one thing look good is to compare it to something that's worse, then you're using the worst or the inappropriate standard to measure. I have read about education for as long as I can remember. I have puzzled over what the problem is when people who have gone to school to learn how to teach don't know how to teach. Then I became aware of how inferior the colleges and schools of education where those who want to be teachers are trained are themselves deficient. Many of them are peopled by old or retired public school administrators. George Bernard Shaw said: Those who can, do; those who cannot, teach. And I add: Those who cannot teach, teach teachers. And that's based on the notion that if somebody studies math and does not do well enough to get a job where math is a requirement, that person goes to a school of education to teach math. The same with various aspects of science. Now Frederick Douglass is a black man who made remarkable achievements in his later life. But he started out as a slave. Obviously, he did not go to school. The philosophy was that an educated black man is a good field hand spoiled. Yet Frederick Douglass learned how to read. He did not teach himself. Nobody on the plantation where he was enslaved taught him. Do you know where and how Frederick Douglass learned how to read? When he was on the streets of Baltimore,... [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR CHAMBERS: ...he was allowed to go do work. And the master, as that person was called, would get whatever his work produced in wages. Frederick

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Douglass, as children will often do, came across some little white boys who hadn't been inculcated in the ways and with the ways of slavery and the notion that because of Frederick Douglass' color he somehow was inferior to them. I'll continue when I'm recognized, Mr. President. Thank you. [LB838]

SENATOR KRIST: Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB838]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Yes, Senator Mello, I would welcome an honest discussion on these issues, but you can't couple that and the call for an honest discussion with distracting and incomplete figures and statements. No Child Left Behind applied to everyone. And, no, it didn't come with funding, yet somehow the state of Florida passed us by without massive, per-pupil spending increases. Somehow they left us behind, not with charter schools, that was a part of it, but with massive, across-the-board education reform, not some huge increase in funding. And it isn't honest to stand up here and talk about how we have the lowest state aid, as if that's a problem, when the only meaningful measure is to really compare spending per pupil, total spending per pupil, which is the number that I put out there which shows us above the national average spending per pupil. State aid is a component, but that doesn't tell the whole story. I mean, is it really the case if we spent more state aid, so then we're spending even more than the national average, that somehow we'll address this? And I didn't even, I don't think, mention poverty this morning that we had the disagreement on last week where we both agree it's an issue, certainly an obstacle, but one that some districts, some schools, and some states seem to be overcoming and we seem to be grappling with. Omaha is not unique. Our children aren't unique. Nebraska is not unique, except that we're falling behind despite spending more money. That makes us somehow unique. And I'm not even counting all the private money that's been pouring into OPS, largely without results so far. I can't believe that this is the discussion we're having where I can stand up and say, we're spending more per pupil than the national average yet we're falling behind in result, and the response is, well, yeah, but our state aid to students is less than the national average. Well, what is that probative of? Is there something magic about the state aid component? I mean, this demonstrates in a nutshell why education reform is impossible because we can't have a meaningful discussion about the terms. How much are we spending on students and what are we getting out of it, not how much is the state itself spending, versus the school district. I mean, where are we going with this? And certainly hunger is an issue. But OPS provides breakfast and lunch. We address hunger. Other states do the same. Some students, you indicated, are in need of mental health counseling. I'm sure that's true everywhere. But that does not account in and of itself for the fact that we are felling behind the nation. If you focus on every single deficiency, we will never get to an overarching way of addressing the problem because you cannot...and I didn't even mentioned charters this morning. I just said we need a new approach and it can't always be more money because, folks, we've done the more-money approach and we continue

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to fall behind. That should tell you something. It isn't always more money. Sometimes it's a different approach. And we can look at what other states are doing that are all subject to the same No Child Left Behind law or we can continue to say, well, you don't understand, we have some kids that are hungry in Omaha, unlike in Chicago, unlike in New Orleans,... [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR LAUTENBAUGH: ...unlike in D.C. In Omaha we have hunger. Well, I'm sorry, folks, we aren't unique. We're becoming unique in our failure, but we're not unique as far as the problems we have. We're unique at our blindness and our pigheadedness and our unwillingness to accept reform. But we're not unique in our problems. We're just unique in our intransigence as we go forward. And I'll be gone soon enough and these problems will continue on. Some of you will still be here. Some of you will be gone with me. But it would be nice to have a feeling that we're actually doing something other than just spending ever more to address these problems. [LB838]

SENATOR KRIST: Time, Senator. [LB838]

SENATOR LAUTENBAUGH: Thank you, Mr...(recorder malfunction.) [LB838]

SENATOR KRIST: Thank you, Senator Lautenbaugh. (Visitors introduced.) Senator Smith, you are recognized. [LB838]

SENATOR SMITH: Thank you, Mr. President, and good morning, colleagues. I'm not standing to oppose the bill and interfere with it. But I do want to just applaud Senator Lautenbaugh and...for his efforts. Sometimes I know, Senator Lautenbaugh, you feel like the lone voice crying in the wilderness of education. And I know this is a controversial topic, but I just applaud Senator Lautenbaugh for pushing for meaningful change in our education system. You know, we may not agree on exactly how to bring about that change, but we recognize that there's a need and the system that we have in place today is not meeting that need. I'm not an educator myself. I know Senator Lautenbaugh is not an educator. So sometimes we may feel like, you know, because we're not educators we're not...it's not appropriate for us to speak on this topic. But we have children in the education system and we realize the importance of education to our state in creating jobs, in economic development. And I, you know, I'm concerned sometimes because I feel like we hold too tightly to or we clutch failed policies and because there is an emotional attachment to it we don't feel as if we can consider change, meaningful change. I think, colleagues, we need to embrace...we should not hold tightly to these failed practices over the urgency for change, and I say real change, in education. I heard Senator Mello talk about the funding as being an issue. Well, I had a bill just last week in committee and I'm not certain if we're going to have a discussion

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on that this year on the floor or not. But that bill was about funding for OPS, funding for children in poverty, families in poverty in the education system. Colleagues, are you aware that 11 of our school districts on the eastern part of the state have lost nearly \$8 million in state aid funding because of a failed policy called the common levy in the learning community? And I told myself I wasn't going to stand up and talk about this prematurely, but I feel like I have to because there's a lack of understanding of what this failed policy is doing to our school districts, how it's dividing district against district, county against county. And I know this is a controversial topic and this is not about the learning community. This is about funding for 11 school districts that are hurting on the eastern part of our state. OPS is one of them, again, losing nearly \$8 million since the common levy went into effect. Senator Mello, let's talk about funding. That's funding for schools in your district and many of my other colleagues here. That's funding for schools in your district. We do not have to abandon the learning community in order to fix problems, and we need to be open-minded enough and willing enough to make some tough choices and sometimes step away from an emotional issue and find the right change. And then also trade education, you know, this...colleagues, I've heard many of you say to me you feel like it's a good idea for us to focus on trade education. [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR SMITH: But I'm not seeing it. I'm seeing it as continuing pushing for education for children that are going to continue into a two- or four-year program and there's many, many children in our communities that can make a better living and that would prefer to pursue a trade, rather than a two- or four-year college education, but we're not providing an avenue for them to do that because we're clutching failed policies and practices in our education system. So, colleagues, I ask you to listen to Senator Lautenbaugh and be open, be willing to look at things a little bit differently and make some tough choices. Let's try some things that are a little bit different. Just because we're not familiar with them doesn't mean they're not good practices that are worth considering. Thank you for your time, colleagues. Thank you, Mr. President. [LB838]

SENATOR KRIST: Thank you, Senator Smith. Those still wishing to speak: Senator Chambers and Senator Mello. Senator Chambers, you're recognized. [LB838]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was talking about Frederick Douglass learning how to read when he was a black child, just as I was. It's interesting when you are the object of a lot of other people's discussion. They read about us. They talk about us. But they are not us and they are not of us. And some white people are arrogant enough to tell me that they know more about the situation because they went to school and studied it--and I've lived it. But here's what happened. These little white boys and Frederick Douglass were in their subteens. The little boys had not taken any teacher training. They haven't even finished elementary

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school if there was a school by that name. And you know what they did? They taught Frederick Douglass how to read on the street of Baltimore only during the times that he could get away from the work. On the way to work, on the way from work, or if he got a lunch break, those little boys taught him how to read. There is nothing magical or mystical about teaching somebody how to read. First of all, you must know how to read yourself, then you'll know how to impart what's in your mind to another person. There is so little emphasis in a backwards state like Nebraska on the things and the ideas that nourish the spirit, if you want to use that term, that stimulate the mind, that will fire the imagination. And I would mention art. I did not speak when they were nominating or voting on the nominations of people to be on the Arts Council. All aspects of art are valuable. I can talk all day and all night and have demonstrated it, but it's still true that in many instances one word is worth...well, one picture is worth more than a thousand words. How are words transmitted through writing? I consider literature and writing to be a part of the general universe of art. So writing is important. It transmits thoughts. A fellow named Bacon said, writing makes an exact man. So literature has its place in the education system in my view. Painting, because it depicts ideas. Whether they are graphic, detailed, or what is called modernistic, that picture can convey more than a thousand words, so the painting, the drawing, the sculpting. Music, everybody would say, fits under the rubric "art." What about music? One of the most famous statements or maxims is misquoted. The statement or maxim says, music hath charm to soothe the savage breast, not beast. Music hath charm to soothe the savage breast. People say "beast" because they haven't read. [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR CHAMBERS: They've listened to other people who misquote, and then that which is a misquote becomes better known than the actual words themselves. There are so many flaws in education. America is falling so far behind it will never catch up. In England they were amazed at how much emphasis is placed in this country on a child's upbringing and the economic status of that child and the parents' income. Their schools are not broken down like that, their public schools. There are snooty schools, hoity-toity schools, private schools where people in this Chamber could not get in, nor could their children, but the system that educates all of the children has the obligation to educate all of the children in the classroom without regard to whether that person is poor, middle class, or wealthy. [LB838]

SENATOR KRIST: Time, Senator. [LB838]

SENATOR CHAMBERS: It's only in America that they make these excuses. Thank you, Mr. President. [LB838]

SENATOR KRIST: Thank you, Senator Chambers. Mr. Clerk. [LB838]

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CLERK: Mr. President, the Agriculture Committee having an Executive Session immediately, south balcony, Agriculture, south balcony now. [LB838]

SENATOR KRIST: Thank you, Mr. Clerk. Senator Mello, you are recognized. [LB838]

SENATOR MELLO: Thank you, Mr. President and members of the Legislature. Senator Harms mentioned this last week when we were discussing LB438. But for the members who aren't on the Legislature's Planning Committee I really do recommend you take advantage of the extensive work that the committee has done working with the University of Nebraska-Omaha Center for Public Affairs Research which they were able to break down census figures by a considerable number of different benchmarks by legislative district. And looking...now, granted--I'll give full disclosure--this was done utilizing pre-2000...it was using 2007...2011 American Community Survey data and it was the pre-2011 legislative districts. But looking at a little difference between Senator Lautenbaugh's Legislative District 18 in northwest Omaha and parts of Washington County when he represented it, as well as my south Omaha and parts of north Bellevue district, there are some striking facts and figures as we talk about education, education reform, and what are the real demographic challenges facing certain areas of our state. One area we can agree on, Senator Lautenbaugh's district, LD18, had 13 percent of its population below the age of five. My district, LD5, had 16.9 percent under the age of five. That really is about the lone, I would say, congruent facts and data based on our previous legislative districts. As you go through a couple other key facts and figures, the median household income in Legislative District 18 in 2011 was \$80,407, where the median household income in my district, District 5 in south Omaha, was \$44,196. That's a discrepancy of almost double what his legislative district's median household income was, comparison to mine. When it come's to bachelor's degrees, we talked about, and Senator Smith mentioned, the focus on trade education and career education. I couldn't agree with him more, but I'll be intrigued to hear what people stand on the floor when talking about the University of Nebraska and our four-year systems in comparison to our technical and vocational schools of the amount of money that's being appropriated to four-year versus two-year schools. That's a policy consideration, no doubt, I look forward to having in future years. But the number of bachelor's degree percentage in Legislative District 18 in 2011 was 48.3 percent. Almost half of Senator Lautenbaugh's district had a bachelor's degree, where in Legislative District 5 we had 12.1 percent of my district had a bachelor's degree. So four times the number of people in Senator Lautenbaugh's district had a bachelor's degree or advanced education. If that doesn't impact a child's upbringing, doesn't it impact a child's educational experience, I don't know what does then because every research that I have seen, from whether it's Dr. Meisels at the University of Nebraska-Lincoln or other well...nationally renowned researchers when it comes to early childhood education shows parents with a higher educational attainment level has a direct impact in regards to a child's early growth years. One fact and figure I'll leave you with, the number of Nebraskans with no high school diploma, in Legislative District 18 it's 3.2 percent. I'll repeat that: 3.2 percent of

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the people in Legislative District 18 don't have a high school diploma, where in Legislative District 5 in south Omaha it's 24.8 percent don't have a high school diploma. There are more people in south Omaha without a high school diploma than with a college degree. Now I say those facts and figures because that is census data. That's not a think tank from a conservative or liberal ideology. Those are census data figures that our Legislative Planning Committee has compiled over the last six years. And I raise those issues of median household income, the percentage with a bachelor's degree, and the percentage with no high school diploma for a reason as that, yes, we agree that our education system needs to improve. Senator Lautenbaugh and myself talked about it last week off the mike extensively. We need reforms in our public school system. We agree on that component. But not taking into account a median household income that is double in a high-income area compared to a low-income area, the number of people with a bachelor's degree is four times the number of people with a bachelor's degree in a low-income area of our city, and the number of people without a high school diploma being almost eight times the number in a low-income area in comparison to a higher-income area, those have real-world implications in public education, in parental involvement, in the ability in regards to where children are coming from in their neighborhood schools in comparison to test scores and accountability systems in wealthier portions, in more affluent portions, and the higher-educated portions of certain school districts. [LB838 LB438]

SENATOR KRIST: Time, Senator. [LB838]

SENATOR MELLO: Thank you, Mr. President. [LB838]

SENATOR KRIST: Thank you, Senator Mello. Senator Chambers, you are recognized, and this, sir, is your third time. [LB838]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I ordinarily am the one who will find occasions when we're on one subject to talk about other things that are of interest to me. This time Senator Lautenbaugh opened the way and this morning I may continue the discussion on other bills. Because I don't want to delay this one, I will not offer amendments or motions on it. But let me tell you all something. The word "expectations" was used the other day with reference to how there are either expectations that are high or low with reference to the students. I say apply that word to teachers. When they can have the excuse, and that's what it is, of saying, these children are poor, therefore, I don't expect them to do much, then you do not put to them the challenge that ought to be put to them to which they could rise if they were given the opportunity. But the teacher expects nothing, doesn't do anything, then what about the expectations on the teacher? There is no expectation on the teacher because you look at where the teacher is teaching. That teacher should have to teach wherever he or she is located. I watch the news. I see this group called Doctors Without Borders. They go to places where there are not hospitals. They don't have adequate medicine,

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but they bring the knowledge and understanding of healthcare with them and they don't deny those people the medication because, they say, they speak a different language, their children are hungry, their clothes are dirty. These doctors feel that where the need is the greatest, that's where you present and apply the most effort. Even the Jesus you all worship said it is the sick who have need of a physician, not those who are well. So when you come to a set of circumstances where people in your opinion are deprived, then they are the ones entitled to more in the way of help. Jesus told you again: I came to seek and to save those who are lost; those who are not lost don't need me. You all talk that but you never put it into practice. You never apply it. You have a preacher or a senator up there praying every morning to what and for what and to what? It's pointless, it's futile, it's a waste of time. I hear people talk about better education going on in west Omaha. And you know the question that I have to ask--where then has all that better education gone?--because there are people on this floor who I believe were educated in west Omaha and I don't see the education in evidence here. I don't see it evidenced in the white people I've dealt with all my life. Every school that I went to I had white teachers. The majority of the students by far were white. And I didn't see that much in the way of education. When I was at Creighton there were students who came from what are called the better schools and I didn't even have to attend classes. I spent most of my time outside of Creighton University sitting on a wall in front of the administration building talking to the priests, talking to the nuns, talking to the students, and some people didn't even know that I was a student in the classroom. But I never failed an exam and never flunked a course. And I carried it on when I went to law school and at that time I was the only black student. And the white students laughed because they knew I had to flunk because I worked at the post office. I came right from working all night at the post office to the law school. [LB838]

SENATOR KRIST: One minute. [LB838]

SENATOR CHAMBERS: I went to the lounge in the basement and went to sleep. And these guys would tell me, uh, Ernie, why do you come to school in khakis and army boots? I said, if you paid more attention to your classes and less attention to how I dress, you'd make the dean's list, as I did, number four in the class. Didn't go to school. So you know what? The white students got together and they said, you need to enforce the absence rule which ultimately the law school did. I didn't flunk courses; I didn't flunk classes; I couldn't be flunked out. So they said, we're not going to let you register because you were absent too much. At another point I'm going to pick up that thread. But what I want to get said here today: Don't you underestimate what my brain will do, and if I'm inferior because I'm black, what does that make you when you're less able to achieve than I? If I'm inferior, what does that make you when I outperform you? [LB838]

SENATOR KRIST: Time, Senator. [LB838]

SENATOR CHAMBERS: Thank you, Mr. President. [LB838]

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SENATOR KRIST: Thank you, Senator Chambers. Senator Murante for a motion. [LB838]

SENATOR MURANTE: Mr. President, I move to advance LB838 to E&R for engrossing. [LB838]

SENATOR KRIST: You've heard the motion. All those in favor, aye. All those in favor, aye. Opposed, nay. Motion passes. Items for the record, please. [LB838]

CLERK: Thank you, Mr. President. I have a corrected hearing notice from the Appropriations Committee for this week, also have a hearing notice from the Transportation Committee, those signed by their respective Chairs. New resolution, Senator Hadley offers LR443 that will be laid over. Senator...for the Performance Audit Committee offers LR444. Pursuant to its introduction I have a communication from the Speaker directing that LR444 be referred to Reference for referral for purposes of conducting a public hearing. Revenue Committee reports LB867 to General File with amendment. That's signed by Senator Hadley. Health and Human Services reports LB728, LB854, LB898 to General File and LB1076 to General File with amendments, those signed by Senator Campbell. Confirmation reports from the Health and Human Services Committee, a series of reports. Priority bill designations: Senator Wightman has selected LB788 as his priority bill. And, Mr. President, a new A bill, LB814A by Senator Avery. (Read LB814A by title for the first time.) That's all that I have, Mr. President. (Legislative Journal pages 553-558.) [LR443 LR444 LB867 LB728 LB854 LB898 LB1076 LB788 LB814A]

SENATOR KRIST: Thank you, Mr. Clerk. Next item. [LB838]

CLERK: Mr. President, LB191 is a bill originally introduced by Senator Nordquist. (Read title.) The bill was introduced in January of last year, referred to the Revenue Committee, advanced to General File. Senator Nordquist presented his bill on February 13. At that time committee amendments were presented by the Revenue Committee. Senator Nordquist had an amendment to the committee amendments that was adopted. At this time, Mr. President, the committee amendments as offered by Revenue are pending. (AM707, Legislative Journal page 1736, First Session, 2013.) [LB191]

SENATOR KRIST: Senator Nordquist, would you like to refresh us briefly? [LB191]

SENATOR NORDQUIST: Right, I sure will, thank you, Mr. President. LB191 would create a state historic tax credit to renovate buildings of historic value in our state. We know that these buildings can be found in every one of our districts. Senator Johnson read a long list the other day of potential cities and projects that people have come forward with already just to say that they have great potential. And before I forget, I

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forgot last week to thank Senator Johnson for choosing this as his priority bill. To be eligible for the credit...and under the committee amendment the credit would be 20 percent, up to \$5 million of expenditure, so the maximum credit that any one project could receive could be \$1 million. That credit is transferable. To be eligible the property must either be individually listed in the National Register of Historic Places, located in a district that is listed with the National Register, designated by local ordinance either individually or as part of a district. But that ordinance and designation has to be approved by the State Historic Preservation Office, so all of these projects have to meet state...either federal or state adopted standards. All of our neighboring states with income tax have these credits. All of our neighboring states that have these credits are at 25 percent or above. This would be, as I said, a 20 percent credit. There is great evidence of economic impact. So for every dollar invested in the...really the footprint of Nebraska, these are tangible buildings that are cemented to our land here, every dollar that's invested will leverage at least \$4 of private investment. So I'd appreciate your support. With the amendment that was adopted to the committee amendment last week, there will be a report coming back to the Legislature in two years at the end of 2017, and the bill would sunset in five years. Thank you. [LB191]

SENATOR KRIST: Thank you, Senator Nordquist. Senator Hadley, would you like to refresh us? [LB191]

SENATOR HADLEY: Mr. President, members of the body, the committee amendment did three things. It tightened up the language, it set a minimum cost for the projects to qualify, and adjusted the amount of the credit. So basically...and then a new section to require a joint report. Thank you, Mr. President. [LB191]

SENATOR KRIST: Seeing no one in the queue, Senator Hadley, you're recognized to close on your committee amendments. [LB191]

SENATOR HADLEY: Mr. President, I just mentioned the things the committee amendment does. I think it tightens up the bill. I would recommend your green vote. Thank you, Mr. President. [LB191]

SENATOR KRIST: You've heard the closing on the Revenue Committee amendments. The question is the adoption of that amendment to LB191. All those in favor vote aye; opposed, nay. Have all those voted that wish to? Please record, Mr. Clerk. [LB191]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB191]

SENATOR KRIST: Amendments are adopted. Mr. Clerk. [LB191]

CLERK: Mr. President, Senator Nordquist would move to amend with AM1935.

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(Legislative Journal page 541.) [LB191]

SENATOR KRIST: Senator Nordquist, you're recognized. [LB191]

SENATOR NORDQUIST: Thank you, Mr. President and members. AM1935 to LB191 seeks to strengthen the provisions in the bill that would allow for recapture of the credit. So under Section 5 on page 8 right now we have the recapture provisions that should somebody choose to take \$4 million of private money, match it with \$1 million of the credit, invest \$5 million in a building, and then a year or two later should for some reason they choose to destroy that building, there is a recapture on that credit. So...and this mirrors what the federal credit is. The federal credit also has a five-year recapture. If you do it in the first year it's 100 percent; second year, 80 percent; down to 20 percent. Well, Senator Schumacher--and we had some discussions off the mike--had a concern that we talked about and this language was an intent to address that. That basically...the intent of the bill is to ensure there's always recapture. We talked about scenarios that potentially if there was a shell corporation that sold the credit and then sold the property and the building was destroyed and the initial shell corporation had no assets that there would be no one to come back on. So what this amendment says is that the liability for the credit goes with the building. So now when you buy that building, you...you're buying the liability for whatever that credit amount is. So you're the one who has the building. If you choose to tear it down for some other purpose you're going to owe the state the money back. And the state already...we already have in state statute state Department of Revenue, Section 77-3904, we already have the ability to put a lien against any property for recapture of the credits. This would just strengthen that to ensure that whoever has the property owes the...owns the liability, or the recapture liability to the State Department. I think this ensures that, as the bill originally intended, the liability for recapture due to destruction of a building would remain in place. So I would appreciate your support for AM1935. [LB191]

SENATOR KRIST: Thank you, Senator Nordquist. Mr. Clerk, we have another amendment. [LB191]

CLERK: Mr. President, Senator Schumacher would move to amend Senator Nordquist's amendment with AM1971. (Legislative Journal pages 558-559.) [LB191]

SENATOR KRIST: Senator Schumacher, you are recognized. [LB191]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Any time you have a situation where your pocketbook is exposed to be bled, it's time to stop and think and examine it. There are four basic issues that bring me to the point of introducing this particular amendment to Senator Nordquist's amendment. I'll explain those four issues, then explain the amendment and explain how we're going to work an awful long time on this bill. As well-meaning as LB191 is, it's a state-of-the-art Trojan

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horse in the people's vault. It throws open wide the doors of the treasury. It invites cleverest of lawyers to plan and to market raiding parties. It, in fact, may actually pay them in the small print to do just that. Treasure chests of six- and seven-figure credits are buried throughout the pages of LB191. There is no limit to the state's exposure. It is a checkbook full of signed, blank checks that can be issued and cashed until well after the year 2020. Our old buildings which in the words of the proponents--not viable anymore, falling by the wayside, the best place to make such a commitment of an unlimited amount of money. Second point I want to make in opening on this is that LB191 provides that taxes are fully assignable. This rarely occurs in our law and never under these particular circumstances. Assignability makes the credits cash. Use of tax credits instead of appropriated expenditures removes the normal controls and oversights of the budgetary process--the year by year, day by day choice making that has got to be made when you have a world of limited resources. A credit granted to a 501(c)(3) organization could be promptly converted to cash, enabling unprecedented, direct, taxpayer-funded contributions to such organizations. State tax credits could quite literally be auctioned off or used as prizes at bazaars and fund-raisers. Once issued, the credit can last for years, be assigned multiple times, and cashed out without notice or planning for the state. There is no budgetary control whatsoever in LB191. We won't even know until 2018 how bad the bleeding is and the commitments of LB191 binds us to keep the blood flowing for a long time after that. The third point: There is no guidance in LB191 as to what historically significant district is or what the credits is for the...the criteria is for the State Historical Officer to approve or deny an ordinance creating a district or application for credits in a district. There is an unlimited delegation of legislative authority to the political subdivisions and to the historical officer. The automatic approval provisions exasperate this problem, making the situation one of "seek and I shall receive." The criteria for the credit is simply not there. There is simply no direction given to the officer regarding what is historically significant district, other than whatever the subdivision wants it to be. If a local government declares all its land within its boundaries to be historically significant, that is all that is necessary. As such, any denial by the officer would be arbitrary and appealable. If the officer does not approve and does not deny within 30 days the designation is approved. Being subject to intense pressure by local property owners or by competition from neighboring governments, what local government would not make a designation as broad as possible to bring as many parcels of property as possible into Santa's castle? Designation costs the subdivision nothing and opens the doors of the treasury to its residence. Yet in spite of all the hype about historical preservation, it includes some of what might be thought of as community's most important...it excludes some of what might be thought of as a community's most important buildings that are in due of preservation, such as fire barns and fire halls, courthouses, school buildings, city halls, powerhouses, town swimming pools, and stadiums; even the outhouse in the public park is excluded. Here is substantially the bottom line on the bill that we are working on and that this amendment of mine addresses. The bottom line on this bill is any project that improves non-owner-occupied residential property and a local

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government-designated area is eligible for the state picking up the lesser of \$1 million--and the language is still ambiguous, might be \$5 million--or 20 percent of the cost of the work if the private owner files application with the State Historical Officer within six months of making the improvement and if the cost of the entire project is the greater of 25 percent of assessed value or 25...of assessed value or \$25,000. Since 501(c)(3) corporations are owners with no assessed value, for them it is only \$25,000. Subject to the approval of a State Historical Officer, any political subdivision may designate an area as being historically significant. There is no rules for the State Historical Officer's approval other than local preservation ordinance be duly adopted by the political subdivision. Local preservation ordinance is not defined in LB191, nor does the term appear in existing law. It means whatever the local subdivision says it means. LB191 does not restrict subdivision to cities. Does this mean counties, school district, NRDs, community colleges, fire districts, interlocal cooperation entities, all of which are subdivisions, can get into the game? Specifically now, with reference to this particular amendment by Senator Nordquist which was an attempt to allay some issues, it did not. This particular amendment which is before you now does the following in addition to what Senator Nordquist's amendment does: It requires the State Historical Officer to do the inspection of the property at least once a year to see if they are misusing the property; it puts a lien on the property which is a first lien taking precedent of all other liens just as a tax lien would to secure the recapture that is called for; it changes from five years of history being bought by a million dollars to 20 years. Leave...if we're going to pay money for it, let's leave it alone for 20 years. It...the bill presently lets the corporation, a corporation or a subchapter S corporation, shareholder skate free. This particular amendment requires the officers and directors of a non-subchapter S corporation to be liable for recapture and it requires and places liabilities on the shareholders of a subchapter S corporation. Throughout, it substitutes the Historical Officer for the decisionmaker as to whether or not there's a violation of the terms of whatever might be in the ordinance if there are any terms. So basically, in summary, this particular little area that we are addressing now, and I've got three or four pages of areas that need to be addressed, requires an inspection of the property to detect violations; it puts the state's interest as a first lien on the property in the event there is a recapture; it makes these things good for 20 years--it doesn't make much sense to spend \$1 million to buy history and let the building be torn down in 5 years or significantly altered in 5 years; it makes corporate officers and directors of a regular corporation liable for the recapture; it makes the shareholders of a subchapter S corporation liable for the recapture, just as the bill otherwise makes LLC members and partners liable for the recapture; it provides the lien is subject to foreclosure as a tax lien; and it, basically, makes one small step in improving one small portion of this bill that is in dire need of improvement should by some chance this bill survive the floor debate. [LB191]

SENATOR KRIST: One minute. [LB191]

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SENATOR SCHUMACHER: We will proceed throughout the course of the next hours to look at the bill in detail, to examine the exposure that the state is taking on, and to see whether or not this is the area that we want to spend literally tens of millions of dollars, perhaps more, every year on--old, dilapidated buildings, instead of things of the future, we pay homage to the past. This amendment I would encourage the body to adopt. It's an improvement on what Senator Nordquist attempted. Thank you. [LB191]

SENATOR KRIST: Thank you, Senator Schumacher. Senator Nordquist, you are recognized. [LB191]

SENATOR NORDQUIST: Thank you, Mr. President and members. I'm not in support of Senator Schumacher's AM1971 and there's a few reasons why, and I think there's a few things we need to remember about this bill. First of all, for a project to be approved, they need to submit their application. The State Historic Preservation Office will either...it either has to, as I've said before, be federally registered or the local political subdivision would make the designation. Then it would go to the State Historic Preservation Office, and if you talk to any developer, and we can put you in touch with them, they will say, our State Historic Preservation Office adheres to very strict standards, they strictly interpret the federal standards right now, and we have no belief that they're going to go away from that long practice of adhering to strict standards. So I don't think there's just going to be a rush of political subdivisions, as Senator Schumacher threw out an example of an outhouse asking for...and I don't know what \$25,000 worth of construction you can do to an outhouse, that's the minimum investment that you would have to make, but I just don't see that being a plausible example. There's very good state oversight right now to historic projects to the federal credit and that oversight will continue. And if there is issues, that's why we will be getting a report within two years, and the program sunsets in five. Secondly, the idea that someone's going to invest a significant amount of private money and then destroy or make that investment...because you don't get the certificate for the credit until the State Historic Preservation Office has signed off on, yes, you met all the agreements that we agreed to in the beginning. So I would have to make \$5 million worth of investments, \$4 million of private investment in a building and then we, for some reason, we're throwing out the scenario that someone is going to destroy that building within a year or two, or change it dramatically away from its historical purpose, well, they just blew \$4 million of private money. I don't know what bank is going to sign on to that business plan or that financing plan. This just makes no sense. So we said, the liability sticks with the building because that building has the investment in it. It has \$5 million of investment in it, the state has \$1 million liability on it, so if it's sold, the building is there as an asset to whoever owns it. And as far as the lien, we have in statute right now, 77-3904: "If any person liable to pay any tax or fee under any program administered by the Tax Commissioner or Commissioner of Labor neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska

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upon all property and rights to property, whether real or personal, then owned by such person or acquired by him or her thereafter." We already have in statute the provisions that there would be a lien on the property for recapture so that is taken care of. The twenty-year lien just does not align with the federal standard and it would create a huge barrier to people making the investment. It would cause lenders, I'm sure, to be much more leary of making the lending that needs to take place to get these projects underway, if you knew that there would be potentially a twenty-year liability on it. So we modeled the recapture, five-year recapture period after the federal provision. Thank you. [LB191]

SENATOR KRIST: Thank you, Senator Nordquist. (Visitors introduced.) Back to discussion. Those wishing to be heard: Senator Burke Harr and Senator Schumacher. Senator Harr, you're recognized. [LB191]

SENATOR HARR: Thank you, Mr. President and members of the body, good morning. I voted for this bill out of committee. I think it's good policy. I think it's a good idea. That does not mean that it cannot be improved. I can't say I favor Senator Schumacher's amendment, but I do think he brings up some good points. And I think we need to clarify the record a little bit and I wanted to see if Senator Nordquist would yield to some questions. [LB191]

SENATOR KRIST: Senator Nordquist, will you yield? [LB191]

SENATOR NORDQUIST: Yes. [LB191]

SENATOR HARR: Thank you. Well, first I want to ask a question based on your last comments. Senator Schumacher's bill makes the tax lien first. As the law currently is, how would you...would that tax lien...under your bill, if it were to pass, would the lien be first or would it be first in time gets first lien? How would that work? [LB191]

SENATOR NORDQUIST: You know, Senator Harr, I'm not sure under 77-3904 what...I can't tell you what order the state gets priority on liens. [LB191]

SENATOR HARR: Okay. Do you think a tax lien should be first lien or second lien or third lien or just in the order that it's filed? [LB191]

SENATOR NORDQUIST: I would be open to that to making it a first lien. [LB191]

SENATOR HARR: Okay. Thank you. And I appreciate that because I do think we can make this better. And if we're going to use taxpayer dollars, it's not our money, and the taxpayers don't get a direct oversight like a bank would. And so I think it's probably okay if we say we get the first tax lien, or first lien on the property. So I do like that aspect of it. My next question is...and this is in response to something Senator Schumacher said,

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and clarify if this isn't right. So there could be a nonprofit that doesn't pay taxes to the state. They get this historical tax credit, they have a tax credit, and we turn around and they could sell that tax credit. So they actually make...they're not paying taxes, they're actually getting more tax money from the Nebraskans. Is that correct? [LB191]

SENATOR NORDQUIST: Right, but that would have to be invested in the property. You have to invest that amount in the property to get the credit. The bill would...if we didn't have the ability for them to sell, the bill would not help nonprofits in any way, so...and I don't want to take up too much of your time, but I could explain a little further if you have a second. [LB191]

SENATOR HARR: But they don't pay property tax then at the end of the day so we never recoup that money. [LB191]

SENATOR NORDQUIST: But the credit is again income tax. [LB191]

SENATOR HARR: Let me ask you this then, and that leads to my next question is, we normally, Nebraska Advantage Act, a lot of our other, other than ethanol tax credits are nontransferable. Why should tax credits...are we opening Pandora...are we letting the nose of the camel under the tent by allowing these tax credits to be transferable? [LB191]

SENATOR NORDQUIST: No. We will know...we do know that when they're transferable that all the credits issued will be used. If they're not transferable, not all the credits issued will be used. But here's the point that we need to make with the transferability. It's critical both for nonprofits and small developers because what they'll do is they'll get their initial application in, get it signed off, now they can take that...they can sell the right to that credit in a contract to somebody, get the cash up-front, take that 20 percent to the bank, maybe it's a little less for some fees on the transfer of the credit, take that 20 percent to the bank and say, here's my down payment. [LB191]

SENATOR KRIST: One minute. [LB191]

SENATOR NORDQUIST: Without that... [LB191]

SENATOR HARR: I appreciate that. I get heartburn when we do tax transfers, Senator Nordquist. I just...and I'm going to just talk for the last minute, but I don't know how we differentiate between...we have on LB775, a Nebraska Advantage Act, a large sum of tax credits that are unusable. We're going to be looking at sunsets both...or the Nebraska Advantage Act sunsets here in a couple of years and we're going to be reevaluating. And my fear is, small businesses are going to come forward and say, hey, if we get a tax credit, we should be able to transfer it, we do it on historic tax credits, why can't we transfer it? And then once you give it to small businesses, why do we not

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give it to large businesses? And my fear is that all of a sudden we create a secondary market for tax credits and there are a lot of tax credits that go unused right now that if we allow them to be sold, obviously would be used and the cost to the state would be great. And I don't know the policy reason why we do it in one spot and not the other. [LB191]

SENATOR KRIST: Time, Senator. [LB191]

SENATOR HARR: So that creates some heartburn. Thank you. [LB191]

SENATOR KRIST: Thank you, Senator Harr and Senator Nordquist. Senator Schumacher, you're recognized. [LB191]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I'll respond to Senator Nordquist's response, point by point. First of all, Senator Nordquist tells us that the State Historical Society is a great body. They administer things all the time in accordance with the rules, with the federal rules, and all these other things, and no doubt they probably do. But we just passed a rule, or in the process of it in adopting the committee amendment. This is the rule today if we were to adopt this. Eligible expenditures means the cost incurred for the improvement of historically significant property located in the state of Nebraska, including not limited to qualified rehabilitation expenditures under the code, including but not limited to, if such improvement is in conformance with the standard. What is the standard that we just said we were going to run under? Well, the Revenue Committee amendment says this is the standard. The building or whatever, it doesn't have to be a building, nowhere in here does it say building, it could be a piece of real estate, it could be a park or creek. But any rate, whatever it is, has to be located within a district designated pursuant to a preservation ordinance or any other ordinance duly adopted by a political subdivision, school, NRD, city, county, whatever of the state, providing for the rehabilitation, preservation or restoration of real property of historic significance that has been approved by the officer and determined by the officer to be contributing to the historical significance of such district. What it says is historical significance is historical significance, and it is what it is, and we give them no guidelines, no expectations whatsoever. We won't even in a historical district, we aren't even restricting in here the fact that you could tear down every other building in the historical district and still this one would be eligible as a historical building. And then for only five years. Okay. We give no guidance at all to the historical officer, and if the historical officer arbitrarily imposes some other rule from some other book, he's arbitrary, it's appealable, and he's only got 30 days to do it anyway so he'd probably never got around to it. If he doesn't get around to it, guess what happens? It's approved. Senator Nordquist says, well, nobody would blow \$5 million on a building to get a million dollars of free money and then let it all go. Wait a minute. You can blow five million pretty easy if you have a big pretty building and you want to put a new roof on it, new foundation on it, a new facade on the front. Then you'd

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decorate a little spot in the inside up, you're local government says, that's just fine, it's cool, and you've got five million spent. You lay low for the five years, and you come in and you gut the entire side. Maybe by then we'll have casinos and you put slot machines in the middle of it. No restrictions at all. You didn't blow the five million because you still got a new roof, you still got a new front, you still got a new foundation, you still got new plumbing and wiring, that's all there. You didn't blow anything, but you got a million dollars free. On the issue of any person liable shall have a lien against this property, yes, but if you carefully read through this bill, what it says is the people aren't liable anymore. At least some of them. At least not corporations. That's what most of this is going to be. At least not Subchapter S corporations. That's what this is going to be. This says if we're going to do this recapture for the five years, and I'm not sure what's so good five years even does us, but if we're going to do it, put a lien on right up-front. That guarantees if they misbehave in that short period of time, they got to cough the money back up. This particular piece of legislation is flawed. The amendment that I propose right now works on some of those specific flaws. It requires an inspection. No inspection is required under the bill right now, or as would be proposed to be amended by Senator Nordquist. It puts corporate shareholders and directors and officers on the line as liable. [LB191]

SENATOR KRIST: One minute. [LB191]

SENATOR SCHUMACHER: It puts the taxpayers first in line of any foreclosure. It's just not putting them on the bottom end so they're making some prior lienholder richer. It says, if we're going to pay this kind of money, if this is all so fired important, if these old buildings are such an intimate characteristic of the state that we got to preserve them forever, then forever should be a darn side more than five years, it should be at least twenty years. We have a provision in other law for just a property tax exemption that goes on for pages and pages of regulations to qualify for that and here we're putting five million dollars, if you read it one way, or a million dollars if you read it another way, per item on the table and just walking away from it, not even looking at it until report comes out the beginning of January of 2018. This is not responsible governance. We cannot pass this bill in its present form, and it's a bad idea to use credits instead of appropriated specific expenditures. [LB191]

SENATOR KRIST: Time, Senator. Thank you, Senator Schumacher. Senator Bloomfield, you're recognized. [LB191]

SENATOR BLOOMFIELD: Thank you, Mr. President. I'd like to yield my time to Senator Schumacher. [LB191]

SENATOR KRIST: Senator Schumacher, you're yielded 4:56. [LB191]

SENATOR SCHUMACHER: Thank you, Mr. President. This amendment is a good

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amendment. Again, quickly, what it does is it requires inspections by the historic officer. How else would you know if an event has occurred that would require this recapture. How else, unless you require inspections? Well, maybe no inspections were really required or intended. It puts the historical officer in the position of making determinations rather than some revenue agent out there who has got to inspect pickle cards and also got to look for sales tax violations. What do they know about historic preservation? Why put them in charge of decision making like the present bill and the present amendment language that would do. It makes it very difficult for people to hide behind a corporation to escape the recapture obligations which they can do very, very easily under the law if this amendment has not passed. The amendment says twenty years is what we're bargaining for on history here rather than five years, which is barely enough time for the paint to dry. That's what this amendment does. It is an important first step in the much bigger picture of looking at whether or not we should put a cap on the exposure that we have, whether we should sunset this expenditure line in two or three years rather than way out in 2020, whether or not it is a good idea to give assignable tax credits which are really rapidly convertible into money which may turn up anywhere and are guaranteed to be cashed if they're assignable. In fact if you give one of these to a historical religious organization, you're in fact making a direct cash contribution to that organization. They were going to fix the roof on the church anyway. We're giving them cash. Never been done. May not even be constitutional to do it. We give the state historical officer under this law...read it. Read the definition of historic property that starts on page 1, plug in the committee amendment, there is no rule. We give him no guidance. And if he doesn't lickety-split make a decision in 30 days, guess what, it's granted and you're off to the bank. How can we do that? This bill is going to need a lot of work or it should be bracketed. The bottom line is, if you have a piece of property in a district which has been designated willy-nilly, no guidance in here for the town or the local subdivision to go by as a historic district, and you're going to breathe down your local government's neck in order to do it because the town down the road just did it. If you have one of those buildings, then even if you were going to do the repairs anyway, you're going to get a check from the state for 20 percent of the expenses. And if you're 501(3)(c), the picnic gets better because your expenses, the most you got to expend in order to be eligible for checks is \$25,000... [LB191]

SENATOR KRIST: One minute. [LB191]

SENATOR SCHUMACHER: ...because the assessed basis of your property is zero. Read the law, plug in the numbers. This is a cleverly designed law and it opens the state's treasury. We cannot pass this without due consideration of what we are doing and the exposure, unlimited right now, that we are placing on the state of Nebraska. We cannot go to this picnic. Thank you, Mr. President. [LB191]

SENATOR KRIST: Thank you, Senator Schumacher. Senator Nordquist, you're recognized. [LB191]

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SENATOR NORDQUIST: Thank you, Mr. President and members. And I understand from the beginning that Senator Schumacher is philosophically opposed to this bill that we're seeking to invest in historic buildings across our state. And there's some pieces in his amendment I'm certainly willing to work on, but if it's going to be amendment after amendment then at some point we just need to move forward. Senator Schumacher, certainly we would be open to the concept, we leave it in the bill that the State Historic Preservation Office basically runs this show as they have been doing with our federal credit for years. And we've trusted them in that area and I have no reason not to trust them now. They've done a great job at it. They've never had any scandal or any issues with approving things that shouldn't be approved. So that's why we trusted them. You want to know why we included a local standard? Because we have developers in small towns come to us and say, those federal standards sometimes are a little tough to meet. If this was an Omaha and Lincoln bill, we would have just probably went with the federal standards. But we put a local option in there with a state checkoff from an agency that does this. This isn't Jeremy and Paul going out and saying, yeah, that looks like it meets historic standards. This is an agency that does this. As far as the lien goes, my understanding is, state tax liens typically get first priority, but if that's something we want to address, we can add that in too. But the comments that Senator Schumacher made about this is a million dollars free that's just going to rain down, that just makes no sense. You have to invest \$4 million of private money to get that million dollar credit. Who in the world is going to invest \$4 million of private money to get a million dollar credit and then tear down their \$4 million of private investment in five years, or six years, or whenever it comes. That makes no sense. So let us just cut through the nonsense. There are some issues we can address, certainly willing. If you don't think the State Historic Preservation Office has enough credibility to do this on their own, we can say they have to go inspect. I would be willing to do that. Certainly willing to say if we want to say state tax lien should be up front, we can do that. But these scenarios that just keep coming that just are not grounded in logic, so let us just move...let us address the issues that are there and move forward. Thank you, Mr. President. [LB191]

SENATOR KRIST: Thank you, Senator Nordquist. Senator Schumacher, you're recognized. [LB191]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Again, let's address the points just raised. Senator Nordquist said, well, it's just too hard to deal with all these complicated federal things and you know the local people they just to write their own rules. Okay. What does this bill say? We don't care, write your own rules, anything works. We give the local government absolutely zero, zilch, no standard that they have got to meet when they write these rules. If they say our town looks historic to me and it's an entire historic district, so be it, that's it. And that's the rule that the state historic officer has got to go by because we've given him no other rules. Now in other laws, we've given them rules. You can look at the requirement that we gave the

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state historical officer for a measly property tax exemption. You can look to the statute, 77-1386 goes on for a couple pages telling them what they've got to do. But not here, no. The local subdivision or NRD or town or whatever it is, just simply says, we're a historic district because we've been around since 1903. Good enough for us. And what do you do? The state now picks up on most of the expenses in excess of two thousand or twenty-five hundred of nonprofit organizations, 20 percent of the tab. They'd have made the repairs anyway. And it's even unclear when you're figuring this 20 percent business whether you can use the whole valuation of the district or it's property by property. That's not pointed out in there and one could argue both ways. Said wait a minute, who is going...the state agency has done such a good job. Well, in the past the state agency has not been in position of being sued for making an arbitrary decision by a private citizen. This sets the stage for that. He criticizes that \$1 million free money. Yeah, it is \$1 million free money. If I owned that big building and I'm going to stick a million dollars into it, five million dollars into it, I'm going to do it. I'm not going to let it set empty. If I'm going to do that, I'll tear it down. But if I'm going to do it, I get a million dollars now. And I only have to sit on it for five years and even then when I got the thing, I still have the roof and the front end and the foundation that's been paid for by this money. I'm ahead all the way around. There is no limit to the creativity that can be imposed in getting the money out of the system this way. In fact, for six months ahead of time, you can scheme with your lawyer and include it in the bill because the law specifically provides for six months ahead of time, legal and audit fees and things like that. What are we doing here? How can we possibly take this risk? No limits. No limits whatsoever. Would you do that with your checkbook? Why are we risking that with the taxpayer's checkbook? The amendment that I proposed is a small step toward a whole list of things and they're not just frivolous things dreamt up. I'll go on at some point here in at least a page and a half of very serious legitimate questions, which I'll begin to pose to Senator Nordquist, and for which there are not answers in the bill. This bill has not been thought through. It is an example of how you can outsmart yourself in drafting a piece of legislation, how you can bury too much goodies in the corners. And it is not the way we want to go ahead or should want to go ahead... [LB191]

SENATOR KRIST: One minute. [LB191]

SENATOR SCHUMACHER: ...and spend the state's money. Two thousand eighteen before we know how much we've blown or how much was invested, whichever way you put it, then it creates rights that go to 2020. You couldn't put the brakes on this thing before 2020. There are no protections that would cause the brakes to be in place. The amendment that I proposed is a good amendment. It is the first of many amendments that we're going to have to consider, or we can maybe say, this thing is flawed, pushed through on the final days of the Revenue Committee meetings last year, and needs to go back to the workshop. Thank you. [LB191]

SPEAKER ADAMS PRESIDING

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SPEAKER ADAMS: Thank you, Senator Schumacher. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR434, LR435, LR436, LR437, LR438, and LR439. Mr. Clerk. [LR434 LR435 LR436 LR437 LR438 LR439]

CLERK: Mr. President, an amendment to be printed to LB191. Notice of hearing from the Agriculture Committee. That's signed by Senator Schilz. Senator Davis has selected LB402 as his priority bill. And the Performance Audit Committee has selected LB836 as the committee priority bill. Senator Kintner would like to add his name to LB191; Senator Johnson to LB191. Senators Mello, Hansen, Christensen, Harms, Seiler, Karpisek, and Wallman to LB1057. [LB191 LB402 LB836 LB1057]

And, Mr. President, a priority motion. Senator Cook would move to adjourn the body until Wednesday, February 19, at 9:00 a.m.

SPEAKER ADAMS: Members, you have heard the motion to adjourn. All in favor indicate aye. Opposed. We are adjourned.