

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

SCHEER: Good morning, ladies and gentlemen, and welcome to George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred Sixth Legislature, Second Session. Our chaplain for today is Reverend Gregg Gahan from the Craig-Alder Grove Parish in Craig, Nebraska, and Senator Ben Hansen's district. Would you please rise.

REVEREND GAHAN: Let's bow our heads for a word of prayer. Father in heaven, we want to thank you for all of these men and women here today. We pray that you'll help them to be respectful as they discuss the matters before them. We pray that you'll help them to deliberate in ways that glorify you, in ways that treat one another with dignity. We pray for every issue before them today, that you'll work with them, inspire them, help them to know what's best, help them to govern in ways that you want them to govern. Lord God, we also want to thank you just for the opportunity to stand here and be servant leaders in this state. Again, I lift them all up to you and all their discussions and everything that happens here today. All this we pray in your name. Amen.

SCHEER: Thank you, Pastor. I call to order the twenty-seventh day of the One Hundred Sixth Legislature, Second Session. Senators, please record your presence. Roll call. Colleagues, Senator Friesen would like to welcome Dr. Nathan Krug from Central City who is providing the physician services for us as the family physician of the day. He is under the north balcony. Would you please stand and be recognized by the Nebraska Legislature. Mr. Clerk, please record.

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

SCHEER: Thank you. Any corrections for the Journal?

CLERK: I have no corrections.

SCHEER: Are there any messages, reports, or announcements?

CLERK: Mr. President, your committee on Enrollment and Review reports LB909, LB996 to Select File. Communication from the Governor: Engrossed Legislative bills LB287, LB310, LB310A, LB381, LB387, LB541, LB643, LB734, and LB734A were received in my office on February 13 and signed on February 19. Sincerely, Pete Ricketts, Governor. Senator Clements selected LB870 as his priority bill; Senator Slama, LR288, as her priority. An amendment; Senator McCollister, print to LB816. Mr. President, two announcements: one, the Banking Committee will have an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Executive Session at 9:30 in room 2022. Banking at 9:30 and then Appropriations at 10:00 in that same room. That's all that I have, Mr. President.

SCHEER: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and here do sign LR312 and LR313. Mr. Clerk, going back to-- return to LB974.

CLERK: Mr. President, LB974; a bill originally introduced by the Revenue Committee and discussed yesterday. The committee amendments were offered. Those amendments are pending. I do have-- and Senator Linehan has pending an amendment to the committee amendments, AM2500. I do have a priority motion pending, Mr. President.

SCHEER: Thank you, Mr. Clerk. Before we get to the priority motion, Senator Linehan, would you like to review us-- where we were at with LB974?

LINEHAN: Good morning, Mr. Speaker. And yes, thank you. Morning, colleagues. When we adjourned yesterday, we were discussing AM2433 to LB974. AM2433 reduces all taxable valuations for school district purposes over a three-year period. That's all taxable valuations: agriculture, commercial, residential, and centrally assessed. We change the basic allowable rate inside the formula from 2.5 percent, which as we discussed yesterday, we rarely leave at 2.5 percent. I think Senator-- Chairman Stinner said yesterday that in the last ten years, it's only twice that we left it at 2.5 percent. We generally change it to reflect what inflation is. And that's what the law just-- this would take us to what we do in practice so schools would not be shocked. We also, for the first time in this bill, guarantee that every child in the state of Nebraska in public school will get some funding for their education from the state; a significant amount, actually. The first year under the-- under our projections funding every child, even if they're in the Sandhills and they're getting no equalization aid, the first year they'll get \$703 per student; the second year, \$1,556; and the third year, \$2,341. And that is based on 15 percent of our revenues from sales and income taxes. And it should in good years, which we hope we've got some in front of us, will increase because our revenues, as we all know, go up by 4.5 percent average every year. And that is what we base our budget on. So with that, I appreciated the debate yesterday. I thought we had a very good discussion and I hope we can continue that discussion today. Thank you, Mr. Speaker.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

SCHEER: Thank you, Senator Linehan. Mr. Clerk, for the motion.

ASSISTANT CLERK: Mr. President, Senator DeBoer would move to bracket the bill until Tuesday, February 25, 2020.

SCHEER: Senator DeBoer, you're welcome to open.

DeBOER: Thank you, Mr. President. Good morning, Nebraska. Good morning, colleagues. I saw Ernie had the yellow tab of motions this morning, but I got here earlier. So you have to get here pretty early to beat Ernie, but I did it. So I wanted to take a chance to say some things this morning and clear a few things up that I heard yesterday in the debate just to make sure we're all on the same page. Yesterday, I heard somebody say that we're not changing the needs side of the formula. It must have been a, a mistake when they said it because, in fact, we're taking out the averaging adjustment, which is on the need side of the formula. And it provides a significant amount of money, tens of millions of dollars, to our equalized schools; that's 80 percent of the kids in Nebraska. So that is a pretty major change to the needs side of the formula. Another thing I heard that I'm a little concerned about is it seems almost like people were implying that the experts don't know what this bill does. But the people who are saying they object to this bill-- by the way, try to get administrators, teachers, and school board members all on the same page. It's a hard thing to do, but we folks have done it here because they universally are against this bill. Everybody representing anything to do with education has come in. Everybody who testified at-- having anything to do with education on this hearing was against it because this bill, they say, is bad for Nebraska and it's bad for our kids. And to say that they don't know what they're talking about, that they don't have all the facts, these people have been working in the area of Nebraska school finance longer than anyone in this room has. And frankly, some of them have been there since I was in public school in Nebraska and that was 30 years ago when the original TEEOSA was written. TEEOSA is the school aid formula we're talking about here. Thirty years ago, some of them who are saying this is a bad bill were in their jobs that they're in now and they have seen the entire life cycle of TEEOSA. They have seen the entire trajectory of this bill. And they say to us, this is not the way to do school finance in Nebraska. When they are universally against it, I feel like they probably are onto something and we ought to listen to them. And by the way, just because they're universally against it, maybe they're onto something-- does that mean we have to listen to them? No, we could, we could push something down

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

their throat. We could say this is the way to do it. We're gonna do it this way. But you know what? I'm afraid that won't work long term. I'm afraid that if we say we're gonna ignore everyone who's a subject matter expert in school finance in the state of Nebraska and we are gonna just push a bill down their throat, we're not gonna keep it for long. What's gonna happen is we're gonna adjust it. Let's do a little history of TEEOSA. This bill was passed in 1990. It had support from farmers and urban senators. It had support from administrators, from teachers, from taxpayers. It had support. They were in a situation like we are now, where taxes-- property taxes had gotten out of control. By the way, they had also been working on it for several years. And how they finally got it done was they got buy-in from the community. They got buy-in from everybody. They came up with a, a plan that nobody got exactly what they wanted, but everybody had a little something so they could fight for it. One of the things we talked about yesterday was whether or not every kid in Nebraska gets some money from the state. The answer is they do. They do. They get something called the allocated income tax. Two point some percent of your income taxes go back to the school district where you live. By the way in 1990, that was 20 percent. That original 20 percent was eroded over time and here we are now. That allocated income tax, which we are completely, by the way, taking away with this bill, gave money to every kid in the state. Now times have changed. Maybe the allocated income tax isn't the answer anymore, but if it isn't the answer, then we ought to be working together; senators from across the state, across whatever divide you can imagine; politically, rural/urban, east/west. I don't know what they all are. We ought to get together and figure out how to work this out so that the subject matter experts say yeah, we don't love it, but we think there's something here for everyone so we're gonna fight to keep it. Now I know that it says that we're gonna have a guaranteed amount to school funding, but that is to the basic funding. That isn't to equalization aid, that isn't to the 80 percent of kids in Nebraska who receive a lot of funding now from equalization aid. And you know what? This body could cut it. It isn't guaranteed. It's just a number, just like we took away that 20 percent of the allocated income tax. We can change that number. There is no guarantee. There's no guarantee that this property tax relief-- which I grant you, LB974 will give some property tax relief. It will give some people a substantial amount of property tax relief, but there's no guarantee that you'll have that in three or four years when the people who are sitting in this body aren't all here. There's no guarantee that we won't take it away, particularly if we are saying we're gonna do it over the objection of the entire education

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

community. They're not greedy. I know these people. They're not out there saying, oh, I would like to get rich off of being a public school teacher. That's not happening. They're paid slightly better than we are, but, you know, it's still not a situation that you get into to become wealthy. These folks are trying to look out for our kids. Do we trust them? Well, I don't know. We send our children to them. My nieces and nephews are in public school. I care a heck of a lot more about them than I do any amount of money that I have. So I trust them. Do I think that they might ask for too much money sometimes out of an overzealous attempt to do the best thing for our kids? Sure. What we're saying is we're-- we may be risking educating our work force too much. We may be risking putting a little too much money into our children. If that's a risk that we have to balance, then we can do that. We can balance that risk, but we can't do it against the objections of every single person who works in school finance in the state of Nebraska for a public school. We can't do that against the objection of the school boards, the administrators, the teachers union; everybody who's saying, wait, this isn't gonna work for us. This isn't gonna work long term. And to say that they don't know what they're talking about, that bothers me. I respect these people. I talked to some of the original writers of TEEOSA, LB1059, in 1990. I talked to those folks. One of the really interesting things about them is that the original group that wrote this bill were on opposite sides of the aisle, whatever aisle you could imagine to draw. That's how they got this done. I am committed to getting property taxes done, but we can't say winner take all. We've got to find a solution that works, mostly, for everyone; that has a few things in it that we don't love, but mostly works. We've got to listen to the experts who are telling us, hey, these numbers don't bear out in the long term. Folks, I ask everyone in this body, help me make lasting property tax reform change. Help me make school finance change that will last. By working together as a body, with me, with all of your colleagues from across our divides, let's get in a room. I tried to do that this summer. Let's get people--

SCHEER: One minute.

DeBOER: --in a room. Let's get all those folks out on the other side of the glass, both for and against this bill. Let's get them in a room and let's figure out what the path forward is. I believe there's a path forward. You know, we've heard that some of the fund-- the growth of schools has gone up more than 2.5 percent. You want to know why? One of the reasons is in Bennington, one of my school districts, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

added 327 students this year alone. That's bigger than a lot of your school districts; 327 students means, yeah, we made-- we had to spend more than 2.5 percent. By the way, we are the cheapest per-student district in the state. But our balance sheet went up more than 2.5 percent to accommodate all of the children. We've got to look at all the numbers when we're doing this.

SCHEER: Time, Senator.

DeBOER: Thank you, Mr. President.

SCHEER: Thank you, Senator DeBoer. Senator Groene, you're recognized.

GROENE: Thank you. I appreciate Senator DeBoer saying she's gonna vote for cloture on LB147 because all the education groups are for it. So I'll take that as a cloture vote. Also, Senator Linehan is the Revenue Chair. I'm the Education Chair. Senator DeBoer is a freshman. I'm gonna tell you, I created bills-- I thought I knew all the answers when I was a freshman. I can show you all my TEEOSA bills. I was wrong. I did not have all the facts. I will put my knowledge of TEEOSA up against any, any business manager at any college, at any school. In fact, in Senator DeBoer's bill, I had to explain to them what basic funding was. One of them works for a think tank now, worked for the Department of Ed prior to that and then for Omaha. They didn't understand how basic funding was, was figured. Why? Because when you live in your little universe at each-- the school that you were at, that is all you know about TEEOSA. The Education Chair has to know how TEEOSA affects 244 districts. I know that. I had my input in this bill with that knowledge. This bill is well written, well written. I might not know English too well, but I know numbers. I've been doing it all my life. This bill works. I have a handout to-- for you about the averaging adjustment. And you will see who gets it. I want you to look at Schuyler, Nebraska. They're part of the 44 districts that have 900 students-plus. They get no averaging adjustment. If anybody knows the history of Schuyler, great school who has an influx of first-time American children, their average cost is \$10,593. That's actually what they spend. Look at the column, when you get it, about the average daily membership cost-- not over here, averaging adjustment is based on basic funding. What basic funding is-- to make it simple, if you know Garrison Keillor and his Lake Wobegon where every child is above normal, basic funding is the cost of an average student in your school that has no special needs, has no poverty. It's the basic funding. The bigger the school, the more efficient; the bigger the company, the more efficient; the bigger the farm, the more efficient. It's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

expected. It's called productivity. Those schools, the bigger ones, their basic funding is less. It should be. The classrooms are full, administrative cost is spread over more students, but then you look at the average daily membership. They will try to tell you because their basic funding is low, that they need extra money averaging adjustment. But look at their average daily membership costs. That's what they actually spend: Lincoln, \$11,508; Omaha, \$12,100. They sit right in there, folks, with all of the Beatrices and-- I mean the, the Schuylers, the Lexingtons, and the Class B schools that are under-- that are 900 students, but don't get any averaging adjustment. They receive the funding for their children through the needs formula. They start with a lower basic cost, but by the time you look at their average spending, it's above Schuyler and we give them extra money. You know what the averaging adjustment was, folks? Right here. Twenty years ago or ten or 20 years ago--

SCHEER: One minute.

GROENE: --we were looking for 33 votes. So they went to the urban senators and said, what do you want? Well, give us some free money. They got the averaging adjustment. That's what that is. It was a grand bargain to get the 33 votes. It was political, not based on needs at all, not based on any reasoning at all, why children need-- for funding and education for children, it was politics. Give us more money and then some of our senators will vote for your bill. That's the hard truth of politics. Averaging adjustment needs to go. That \$30 million needs to be spent across all of our 325,000 students in public education, not given to, as a political ploy, to only some schools. It needs to go away. That money needs to be shared by all. Anyway, it's a darn good bill. I know Senator Linehan is working with it to get to the 33. This bill needs to go on.

SCHEER: Time, Senator.

GROENE: It needs to continue.

SCHEER: Thank you, Senator Groene. Senator La Grone, you're recognized.

La GRONE: Thank you, thank you, Mr. President. I stand in opposition to bracket the motion and still in support of LB974 and the committee amendments. I want to make a couple of points and then I'll give Senator Linehan some time should she choose to use it. But one is that it was pointed out that this bill is about children's future. This

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

does not do anything to jeopardize the children's future of Nebraska. And on top of that, what I'm truly concerned about is the fact that with rising home costs, due in a large point to property taxes in terms of what you pay every month, we're really inhibiting the ability of the next generation to own a home, which inhibits their ability to grow wealth and achieve the American dream. And that's something we haven't seen before in a long time. And 30 years ago, when this-- it was pointed out that was the last time we touched this, you didn't have the extreme rise in student loan costs that you have now. This generation often has a substantial student loan payment on top of what would normally be a mortgage and then the rising costs associated with property tax to go along with that. So I'm concerned about this over the long term in terms of homeownership. And then second, it was talked about, about growth and ensuring that we protect the ability of communities to grow. I represent one of the fastest-growing communities in Nebraska. This bill protects growth. This bill allows for additional funding due to real growth. This bill ensures that communities who are growing quickly and need additional resources because of that are kept whole. So I just wanted to point those out. And with that, I will yield the remainder of my time to Senator Linehan.

SCHEER: Senator Linehan, 3:20.

LINEHAN: Thank you, Senator La Grone. Thank you, Mr. President-- Speaker. I'm gonna-- so I'm tired. I'll admit I'm tired. And I was rather disappointed when I read the paper this morning. I met with Senator DeBoer several times this summer. I didn't discourage her from studying TEEOSA, discourage her from having meetings. I did suggest that I didn't exactly know how she was going to go forward when she wasn't on the Revenue Committee and this is about property taxes. And she's not on the Education Committee and it is about school funding. And I'm a little insulted, I think would be the right word, that somehow I don't know what I'm doing. I'm not young. I'm pretty old. I actually remember 1990. I remember what it was about. It was about property taxes. I know-- not only have I talked to them, I know the people who worked on that bill and I've known them for 30 years. I've read the paper of the state of Nebraska. I know what's going on in government. That's all I've done my whole life. I grew up in rural Nebraska. I know rural Nebraska. I've lived in three school districts in Omaha. I know something about school funding and I know something about the needs across the state. Again, that's all I've done all-- my whole life. I've told several of you-- I know there's concern about

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

special ed funding. When I worked in Washington, I worked every year to increase special ed funding, every year. This is not a new subject to me or something I just decided I'd get interested in the last few days or years. It is not throwing spaghetti against the wall.

SCHEER: One minute.

LINEHAN: Nobody that I know has a gun to their head in this body. And we're talking like everything's gonna be fine if we do nothing. If we do nothing, Lincoln Public Schools, this next year, loses almost \$20 million in equalization aid; \$20 million is what Lincoln Public Schools is gonna do. And if we do nothing, that means the property taxpayers in Lincoln, Nebraska, are gonna have their property taxes go up \$20 million on top of the bond they just passed. Thank you.

SCHEER: Thank you, Senator La Grone and Senator Linehan. Senator Lowe, you're recognized.

LOWE: Thank you, Mr. President. You know, it kind of seems strange that the people that are against LB974-- by the way, I am against the bracket motion and for the amendments and LB974. But the people against LB974 are the ones that are always screaming that Nebraska is one of the lowest states that supports their schools by state funding. They're the ones that are against it. And this actually increases state funding to our students and to our schools. Now which, which side of board are they on? Are they just against a good bill or are they against children? That's the question we have to ask. With that, I'd like to yield the rest of my time to Senator Linehan if she would like it.

SCHEER: Senator Linehan, 4:00.

LINEHAN: Thank you. Thank you, Mr. Speaker. Thank you, Senator Lowe. I've talked to some schools over the last-- well, now I don't know-- for four days. I've been reaching out to them as I've been reaching out to them all summer. I'm actually getting to be kind of buddy-buddy with several superintendents. I've got meetings lined up and I need to talk to the Revenue Committee. We want to sit down with the schools and figure out how to go forward. They, they, I think, all can see their way through the first three years, especially when you sit down and talk to them and explain that we're not capping their spending and inflation the first three years. They can all, as you know-- and if I haven't walked any of you through your concerns or sheets, I'm willing to do that; glad to do it, glad to work all weekend, glad to do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

whatever I can do to move this forward. It is-- this is about students in Nebraska across the whole state. This is about making sure that because a low-income child lives in Wymore, Nebraska, doesn't mean that they don't get the funding they need to help them make sure they can succeed in school. It's about-- it's not about hurting the greater schools. That's not at all what it's about. I represent the greater schools. It's about making sure we're fair to everyone. I mentioned before what happens to Lincoln if we don't do anything, if we stay with current law. Here's some other schools: Bellevue Public Schools-- if we do nothing with this bill, Bellevue Public-- if we don't do this bill and stay at current law, Bellevue will lose \$2,028,000 in equalization aid next year, meaning their property taxes will have to go up \$2,028,000. Papillion-La Vista, if we do nothing, their equalization drops \$1,530,542. Now that's, that's the law now, folks. That's not-- leave the law like it is. Wahoo loses \$75,000. There are several schools that are going to lose equalization aid. As a matter of fact, in total, we're talking about millions and millions of dollars that property taxes are gonna go up unless we do something new and different on school aid. I don't think any of us here want to leave--

SCHEER: One minute.

LINEHAN: --without ensuring Nebraskans that we are concerned about their property tax bills and we're gonna do something about it this year. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Lowe and Senator Linehan. Mr. Clerk.

CLERK: Mr. President, some items, thank you. General Affairs Committee, chaired by Senator Briese, has selected LB1056 and LB1064 as the committee priority bills. An amendment to be printed: Senator McCollister to LB974; Senator Friesen to LB944; Senator Howard to LB1059. And new resolution, LR325 by Senator Howard. That will be laid over at this time. Mr. President, a reminder announcement, Appropriations will meet in Exec Session at 10:00 in room 2022. That's all that I have, Mr. President.

SCHEER: Thank you, Mr. Clerk. Colleagues, this bill has exhausted its first three hours and we will move on to the next item. Mr. Clerk.

CLERK: Mr. President, LB1016, was a bill originally introduced by the-- by Senator Matt Hansen, excuse me. It's a bill for an act relating to labor. It amends sections 48-1228 and 1231. It changes the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Nebraska Wage Payment and Collection Act, it harmonizes provisions, repeals the original sections. Introduced on January 15, referred to Business and Labor, advanced to General File. There are committee amendments pending.

SCHEER: Thank you, Mr. Clerk. Senator Matt Hansen, you're welcome to open.

M. HANSEN: Thank you, Mr. President, and good morning, colleagues. This bill is the first of the two Business and Labor Committee priorities and is a package containing three bills, all related to the Department of Labor. All three bills had no opposition at their hearings and the committee package and committee amendment were adopted unanimously by the committee. I'll focus on the package further when I open the committee amendment. For now, I'll focus on LB1016. LB1016 makes changes to the Nebraska Wage Payment and Collection Act in order to facilitate compliance enforcement, especially for employees and former employees who the Department of Labor confirms are in fact owed back wages. To give context, last year, Nebraska workers filed over 1,200 complaints with the Nebraska Department of Labor, claiming over \$2 million in unpaid wages. I believe that the department has done an excellent job in processing this large number of complaints in a timely and efficient manner. Of those 1,200 complaints, 509 were resolved, leading to over \$456,000 in wages being returned to the employees. The department has also done a great job implementing the new enforcement mechanism that began in 2015 that allows them to issue a citation to employers who are found to owe back wages. In fact, a large number of complaints are settled once the department alerts the employer that the employee has a claim for unpaid wages. The additional-- addition of additional enforcement powers to the department, excuse me, several years ago has helped to make this a more efficient process. However, a hole still exists in the system. An employee could be owed wages by their employer, file a complaint with the Department of Labor, and after investigation, the department could in fact come to a conclusion that the wages are owed to the employee. The department can then issue the citation, but then the employee still might not recover the unpaid wages, leaving them back to square one. This is because the department has no mechanism to actually recover the wages and return them to the employee, which is the problem we're trying to solve in LB1016. To be clear, we're not actually giving the department collection powers, but instead, helping employees who might need to follow up with a civil suit. This bill is a culmination of over two years looking to what improvements can be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

made to better enforce our wage laws. I've met with workers' rights advocates, business groups, and the department to try and come up with a bill that works for all parties involved. And the Business Committee--Business and Labor Committee had an interim study, LR128, this past fall as well. The rest of discussion, I believe, has led to-- the results of this discussion, I believe, has led to a consensus bill with the committee amendment. LB1016 was heard by the Business and Labor Committee February 3, where we had three organizations testify in support with no opposition. At the hearing, I presented an AM, AM2257, which incorporated suggested changes we wrote in consultation with the Nebraska State Chamber and the Nebraska Federation of Independent Businesses. That amendment is incorporated within the current committee amendment on AM2350. Both the bill and the amendment were supported unanimously by the committee. With that, I will close on the bill, Mr President, and like to open on the committee amendment.

HILGERS: Thank you, Senator Hansen. As the Clerk noted, there is a committee amendment, AM2350. As Chair of the committee, you are welcome to open.

M. HANSEN: Thank you, Mr. President. AM2350 is the committee amendment to LB1016, which contains an amended version of LB1016 and the provisions of LB788, which was introduced by Senator Slama, and LB926, which was introduced by the Business and Labor Committee. This is one of the Business and Labor Committee's priority bills for the year. All three bills amend provisions related to the Department of Labor. All three were advanced from the committee unanimously and no opposition testifiers on any of the three bills. In putting together this package, I would like to thank Commissioner Albin and the Department of Labor for working with us as well as the Nebraska Chamber of Commerce, the Federation of Independent Businesses, Nebraska AFL-CIO. I would like to thank Senator Slama for her work on LB788 as well as the rest of the Business and Labor Committee for their support. This amendment makes some changes to the green copy of LB1016 after discussion with stakeholders. First, the language on damages for violations of the Wage Payment and Collection Act are simplified to allow for the collection of the full amount of the judgment as well as costs and reasonable attorneys fees. This removes language in the current law that allowed attorneys' fees of not less than 25 percent of unpaid wages. The current language was confusing and unnecessary and was, at times, being erroneously used as a ceiling rather than the floor it was intended to be. The amended bill removes this concern. It

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

was crafted by all parties involved. Also clarified from the green copy of LB1016 is new language allowing retaliation claims only in those-- only if those employees would not otherwise be covered under the Nebraska Fair Employment Practice Act that covers employees with 15 or more employees. The Nebraska Wage Payment and Collection Act covers any employer. Therefore, this section will protect retaliation for those employees who work for an employer with 14 or less employees. This is simply intended to close a loophole between the scope of the two different acts. Additional changes from the green copy of LB1016 are that we clarified when a citation for violation of the act is used in court, it must be directly related to the facts in dispute. We also changed a new department reporting requirement to only require the number of employees with two or more citations in the previous five years to be published on the department's website and not the names of those employers. All of these changes contained in AM2257, which was presented to the committee and the members at the hearing, was the language my office worked on consultation with the Nebraska Chamber of Commerce and the Nebraska Federation of Independent Businesses. And as I said before, that amendment has been rolled into this committee amendment. The second bill included in this committee was LB926. LB926 was introduced by the Business and Labor Committee at the request of the Department of Labor. LB926 had a public hearing on January 27 of this year. It had no opposition testimony and was advanced to General File. It changes the hearing and citation process of the Employee Classification Act to mirror the process used in the Wage Payment and Collection Act. The Nebraska Department of Labor is responsible for administrating both programs. The Employee Classification Act for the Commissioner of Labor assesses fines after notice and a hearing that a contractor has violated the act. However, the Wage Payment and Collection Act authorizes the department to issue a citation when an employer-- when an investigation reveals the employer may have violated the act. The employer then has 15 working days after that date of the citation to contest it. Appeals are sent to the department and a hearing is held in accordance with the Administrative Procedures Act. Conversely, the current Employee Classification Act requires that a hearing before the citation may be issued. This process attempts-- this bill attempts to align these two processes. This will provide consistency in the citation and appeal process for the violation of both acts. This will also help state employees who enforce both acts, businesses to comply with both acts, and hearing officers that conduct the hearings. The Department of Labor felt that the current statutory format for the Employee Classification Act violations hinders enforcements and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

creates a more timely and costs-- timely-- excuse me, creates a more time consuming and costly administrative process. Many investigations result in settlements without actual citations. Therefore, LB926 will assist the department in enforcement of the act. Also included in the committee amendment is language of AM2268 to LB926, which was worked on after the hearing with the Association--Associated General Contractors in order to further clarify the timeline of when these orders become final. The third and final bill included in the package is LB788, which was introduced by Senator Slama. It had a public hearing on February 3 of this year. It had no opposition testimony and was advanced to General File unanimously. LB788 does several things, all recommended by the Department of Labor. First, it changes a due date for the annual Worker Training Board Report from July 1 to December 31. This will give the department time to complete the report with accurate numbers, as the fiscal year ends on June 30. Second, the bill provides flexibility for the required fee for contractor registration by allowing the fee to be up to \$40, where it is currently set. Currently, the fee generates more revenue to needed to administer the program. The department projects that they could reduce the fee to \$25. LB788 also repeals three sets of statutes where the original purpose of the regulation appears to no longer exist. First, it repeals the service letter law found in sections 48-209 to 48-211. It is-- a request for the service letter has not been received by the department in over a decade, likely due to the fact the information that would be provided under the law is already routinely gathered during the unemployment process. Second, the bill repeals 48-440, which requires a notification to the department 48 hours prior to work on high voltage lines. Again, according to Department of Labor, it has been over a decade that any such report or request has been received. And then finally, this bill repeals the employment agency law found in sections 48-501 to 48-524. Currently, there are two employment agencies licensed in Nebraska. However, in reviewing the license application, neither applicant meets the definition of the private agency under the current law. Thus, this law technically applies to no existing businesses and according to the department, has not for quite some time. With that, I would conclude my opening on AM2350 and urge your adoption of both the committee amendment and the advancement of LB1016 as the Business and Labor Committee priority. Thank you, Mr. President.

HILGERS: Thank you, Senator Hansen, for your opening. Debate is now open on AM2350. Senator Slama, you are recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

SLAMA: Thank you, Mr. President, and good morning, colleagues. I wanted to briefly thank Senator Hansen for adding my bill, LB788, into the Business and Labor Christmas tree bill for this session. I think, overall, LB1016 is a great piece of legislation that's-- represents several bills proposed by the Department of Labor. My bill, again, just to reiterate, is a clean-up bill in the purest definition of the phrase. We repeal three laws that have not been used in the last decade, adjust a reporting date, and ensure that the Department of Labor can lower fees in some areas if it's realistic for them to do so. So I would encourage you all to give your green vote to AM2350 and LB1016. Thank you, Mr. President.

HILGERS: Thank you, Senator Slama. Senator Chambers, you are recognized.

CHAMBERS: Thank you. Mr. President, members of the Legislature, I support this bill and I didn't have much to say on that bill that you handled this morning and yesterday on the taxes and schools, but the-- all the school people know what's going on with reference to the schools. Senator Groene mentioned what he knows about numbers. Well, I would listen to the school people before I listen to all these other off-the-wall, side-issue people. I was not going to say anything on that bill. And if it comes up again, I don't know if I'll say anything. It's much ado about nothing. There would be a lot of thrashing, a lot of complaining, but I don't know if there will be 33 votes. However, we're in the part of the session now where you all need to look at this man who's speaking. You don't have to literally do it and know that when you're in this part of the session, I can take it and make it mine. And some of the things that you all have been doing, I don't like. Senator Pansing Brooks had three bills that related to penal reform, prison reform, and you all got together and made sure we wouldn't get to those bills. We even adjourned one day about 10:30 and didn't get to the bills. Now Senator Slama is the youngest person here, I believe. When I was in school-- I memorized the Gettysburg Address when I was in grade school. She read it. I was shocked. She should have been able to do like I did as a little kid. "Fourscore and seven years ago our fathers brought forth, on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal." That-- now you don't even know what I'm talking about, do you? They're not paying attention to anything that I'm saying. "Fourscore and seven years ago, our fathers" our fathers "brought forth, on this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

equal. Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived, and so dedicated, can long endure." Then he talked about how you have this battlefield you're going to dedicate, "But... we cannot dedicate--we cannot consecrate--we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or to detract." Then his famous words, "The world will little note, nor long remember what we say here, but it can never forget what they did here." Then at the conclusion, "and that government of the people, by the people, and for the people shall not perish from the earth." And I could have filled in the other parts, but you all were doing something to stop us from getting to Senator Pansing Brooks's bills. I know how to play that game. And I'm going to determine when I should demonstrate to you what I can do under your rules when I decide to do it. I'm going to speak one more time on this bill so that I can say what I have to say without offering a motion of any kind or an amendment. And as I've stated, I support the bill, even though Senator--

HILGERS: One minute.

CHAMBERS: --Slama has a part in that bill. I don't see everything that a person is doing as being objectionable to me, even when I find something else that person may have done is objectionable. I will pick my times, and maybe like one of those songs that I quoted but didn't sing, suddenly wham, all the lights went out and a voice cried, die, you must. A woman screamed, a shot rang out, and somebody bit the dust. The lights flashed on and the northwest mounted police came crashing through. They drew their gun and said, which one is Dangerous Dan McGrew? So get ready for the suddenly wham, the lights went out. Thank you, Mr. President.

HILGERS: Thank you, Senator Chambers. Senator Chambers, you're next in the queue. You may continue.

CHAMBERS: Thank you, Mr. President. Senator Linehan was going through a little heartburn this morning. I will never have heartburn because I don't have a heart. So I have an advantage over all the rest of you. But I was going to read this poem that Rudyard Kipling wrote called "If" and I'm going to do it like Senator Slama; I'm going to read it. If you can keep your head when all about you / Are losing theirs and blaming it on you, / If you can trust yourself when all men doubt you, / And make allowance for their doubting too; Oh, I'm supposed to read it, that's right. If you can wait and not be tired by waiting, / Or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

being lied about, don't deal in lies, / Or being hated, don't give way to hating, / And yet don't look too good, nor talk too wise: / If you can dream--and not make dreams your master; / If you can think--and not make thoughts your aim; / If you can meet with Triumph and Disaster / And treat those two impostors just the same; Oh, I'm supposed to be reading like Senator Slama. Let me find-- If you can bear to hear the truth you've spoken / Twisted by knaves to make a trap for fools, / If you can stand to watch the things you gave your life to, broken, / And stoop and build 'em up again with worn-out tools: I'm supposed to be reading, huh? If you can make one heap of all your winnings / And risk it on one turn of pitch-and-toss, / And lose, and start again at your beginnings / And never breathe a word about your loss; / If you can force your heart and nerve and sinew / To serve your turn long after they are gone, / And so hold on when there is nothing in you / Except the Will that says to them: Hold on! / If you can fill the unforgiving minute / With sixty seconds' worth of distance run, / Yours is the Earth and everything that's in it, / And--which is more--you'll be a Man, my son! I was supposed to read it, wasn't I? Sometimes I forget what happens right now, but I remember what happened a long time ago, like memorizing that poem when I was a kid. I had put something together and handed it out to you all, which I'm sure most of you wouldn't read. It talked about Rudyard Kipling and his poem, "If." And when I first read it-- see, I had three sisters. I have numerous nieces. And I wondered when I read that poem, where does Kipling say anything about my sisters or my nieces or any woman? So here's what I decided I would do. And I gave a little intro. Some of us have or had a daughter whom we cherish or cherished and would die and go to hell ten times for her. It is most apropos to acknowledge daughters, which I would do by appending two couplets to Kipling's "If." Granted, my poems may not soar like the eagle or evidence the swoop of the falcon, but they have rhythm and rhyme. And here's what I would add, because he said: fill the unforgiving minute/ With sixty seconds' worth of distance run, / Yours is Earth and everything that's in it, / And once more, you'll be a Man, my son! If you can scale life's most forbidding mountain and desert, cross those scorching sands wax hotter, you shall drink deeply from wisdom's fountain and which is more, you'll be a woman, my daughter. You all need to wake up and start looking at reality.

HILGERS: One minute.

CHAMBERS: Now women can take over this country. You were not allowed to vote for a long period of time. I don't want to go off on a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

tangent, so I'm going to turn my light on one more time and wrap it up. Thank you, Mr. President.

HILGERS: Thank you, Senator Chambers. Senator Chambers, you are next in the queue. You may continue.

CHAMBERS: Thank you. And other bills, I don't see this morning that I need to say much about. But I'd venture to say that what I would say would have more substance, more challenge to the intellect than what will be said on these bills. Women could take over this country. The young women, your foremothers took a lot of guff, put forth a lot of effort, and were simply swept aside. Black men got the right before-- right to vote before white women. You all didn't know that, did you? Because when it came to voting, black men were considered men, although we were owned as property and not deemed citizens. And I'm not a citizen to this day. Some people say, well, you're a citizen because you were born in America. If you're black and born in America, that does not make you a citizen. If a cat had kittens in an oven, would that make the kittens biscuits? Don't talk that craziness to me. When I don't have all of the rights that a citizen has, don't tell me I'm a citizen. You can fool, as Lincoln said, all people some of the time. You can fool some people all of the time, which is what Trump's followers follow. But you cannot fool all people all of the time. I quote your white leaders, the ones you say were great, to try to make you understand. I'll speak the language you were taught in school and maybe you can extrapolate from that and come to where I am today and figure out what I'm trying to tell you. Women wouldn't have to carry picket signs. You wouldn't have to walk picket lines. You wouldn't have to open your mouth. All you do is go into the privacy of that voting booth and vote. You need to vote. Women who want the right to determine whether they will carry a pregnancy to term don't need to come to male-dominated legislatures where women are disregarded, disrespected, and condemned and criticized and plead with them. Take those positions and fill these legislatures and enact the laws that will benefit women and the children that you will have that will make the better-- a better place of this world for your children. You will think more about the future, not just about this snapshot instant where you can make a ton of money then dominate and mess over people. You all need to vote. And if you don't vote, you don't need to talk about anything. But before you can vote, you have to register. Why don't the universities, the elementary schools, and every place where they teach young girls things, don't they emphasize that which is able to give them more power than anything else? If you carry a gun that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

doesn't give you power, that makes you a target. And they blow you away, you're through. But if you register, then the politicians will begin to pay attention because those registered voters may become actual voters. The numbers of your registered selves will catch the attention of politicians. Then you must vote, vote, vote. Nothing else you do means anything. Nothing else you do in this society means anything and you don't mean anything. Look how they messed over Senator Pansing Brooks's three bills. They wouldn't do that to a man.

HILGERS: One minute.

CHAMBERS: Women need to wake up. And if what I say is offensive, it's meant to be. And then if you find me offensive, then you get women in my district to vote against me. And that's where your vote will work. But if you don't vote, we treat you like we do children, just like they do Senator Slama. Ho hum, humor them, give them this, then let them go back to their cupcakes, teas, and being pregnant and barefoot. Thank you, Mr. President.

HILGERS: Thank you, Senator Chambers. That was your third opportunity on this issue. Speaker Scheer would like to welcome 12 members of the Nebraska Health Care Association LEAD class. The members are from across Nebraska. They are seated in the north balcony. Please rise and be recognized by your Nebraska Legislature. Continuing debate, Senator Blood, you are recognized.

BLOOD: Thank you, Mr. Chairman. Fellow friends, fellow senators, friends all-- got that wrong this time. I'm gonna speak really briefly. I stand in support of both the amendment and the bill very enthusiastically. But I had something I wanted to say on the previous bill and I'm gonna say it now. Last I knew, Senator DeBoer knocked on doors, thousands, made thousands of phone calls, worked very hard to be elected into the position that she is in. I respect Senator Groene in that he speaks his mind. But when you speak your mind in a way to say that somebody on this floor is less than because you have more years than they do on the floor, that is not acceptable. The Speaker, multiple times this year, has told people to get to business, to concentrate on what's important, which is getting things done here in this body. There's been shenanigans going on that have not benefited anybody because I guarantee the nights are going to be late at the end of this session because of these shenanigans and I'm sure more to come. But the thing I really want to emphasize is that every single woman in here, with one exception, fought hard to be in their seats. We knocked on doors, we made phone calls, we wrote postcards. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Senator Slama, I don't mean that to be offensive in any way. It's just a fact that you were appointed. And that is not to make you less than anybody else in this body. But I want to say that when people talk in a condescending manner and imply that they don't know what they're talking about or imply that they don't know the information that they're reading off the notes that they've written during the debate, it's just insulting. And so I just want to remind everybody that I don't care if you're a man or a woman or your gender is fluid. I don't care who you are, you have the right to be here. And when people talk to you on the mike, they do not have the right to question your ability to do what you do. Because whether we agree with you or not, you busted your butt to get here. And so for all the women here today, especially ladies, sisters, straighten your crowns. Straighten your crowns. Be strong, move on. Words are just words and people need to think about those words, no matter how perturbed they are that people aren't supporting their bill, especially when they refer to the women on this floor. Because frankly, I'll keep standing up and doing this until it stops. And I know you guys don't enjoy listening to me all the time. So get it together. Let's be professionals. Let's support our body. We are all senators. We are all here for a reason. And I don't know about you, but I busted my ass to get here. So I expect respect and I will give the same to you. Thank you, Mr. Chairman.

HILGERS: Thank you, Senator Blood. Senator Slama, you are recognized.

SLAMA: Well, thank you, Mr. President. I find this morning's comments very interesting and I'll deal with them one by one. I was hoping to have a little bit more time to get my thoughts in order, but we'll do it off the fly. To address Senator Chambers' comments, I do find it offensive when a man says that women need to make up-- wake up. I find it more offensive when he refers to conservative women as the types that are happy to drink tea and eat cookies and stand outside barefoot and pregnant. That's unacceptable language. If we're gonna sit here on the mike, Senator Blood, as women and say that we shouldn't act in a condescending manner, say that we should act in a professional manner-- if we're going to say that we need to stand up as women together and straighten our crowns and support each other, then it's up to you to call that out, not to pile it on in addition to that and imply that I didn't work to get in this office. I'd argue that as I've gotten here, I have fought for my district harder than-- just as hard as anybody in here. So to anybody who wants to argue that conservative women are somehow less than our colleagues in this body or appointees are somehow less than others in this body, we are all senators in this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

body just the same. And just because we have differences on the political spectrum doesn't make us the type of person that would stand outside, drink tea, eat cookies, and be barefoot and pregnant. I take offense to that comment and it deserves to be called out. That is sexist and it is wrong. Thank you, Mr. President.

SCHEER: Thank you, Senator Slama. Seeing no one in the queue, Senator Hansen, you're welcome to close on AM2350.

M. HANSEN: Thank you, Mr. President. And thank you, colleagues. Just as a reminder, AM2350 is the committee amendment that combines LB788 by Senator Slama and LB926 by the Business and Labor Committee into LB1016 as one of the Business and Labor Christmas tree packages. I thank the committee for their work on this bill and I urge the body to adopt the committee amendment. Thank you, Mr. President.

SCHEER: Thank you, Senator Hansen. The question before us is the adoption of AM2350 to LB1016. All those in favor, please vote aye; all those opposed, vote nay. Have all voted that wish to? Please record.

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of committee amendments.

SCHEER: AM2350 is adopted. Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Chambers would move to bracket the bill to a date certain.

SCHEER: Thank you, Mr. Clerk. Senator Chambers, you're welcome to open.

CHAMBERS: Thank you. Mr. President, this is one of those motions that I offer to jump to the front of the line when I've got something I must say. If I make hats and just put them out there and you snatch one and put it on your head, that's because you thought it fit. If I give a description and you apply it to yourself, that's a guilty conscience. You read the transcript and you will not see, Senator Slama, where I said conservative women. I was talking about women, period. And not one thing I said was untrue. Women are a numerical majority in this country. Women don't have to walk picket lines or carry picket signs or do any of the things that might be upsetting. Just register and vote. The fact that Senator Slama introduced the term "conservative women" when I said they want to keep you barefoot, pregnant, and whatever else that series was, it was not me saying

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

that's what conservative women are. But since you profess to be a conservative woman, applied that to yourself and other conservative women, you need to look in the mirror and apologize or apologize to conservative women. I don't put labels on people. Conservative-- if you're white, you have racism in you. Whether you're a conservative, a liberal, a so-called radical progressive, down to the nitty-gritty, you are white. You are privileged. You behave like a white person, you think like a white person, and you consider yourself a white person. When somebody like me or somebody who is a Latino or somebody who's a Muslim or any of the groups that are considered not quite full-fledged human beings, you tune it out because it doesn't apply to you. You know that white people are not gonna be mistreated like that. So she, Senator Slama, must be carrying a very heavy weight of guilt. She's the one who applied my words to herself. I didn't hear anything from Senator Blood that insulted Senator Slama. Senator Blood had made the comment that all the women here had knocked on doors, had rung bells, and whatever else she said-- I don't want to misquote her-- except one and that's Senator Slama. She was appointed. And not disparaging or denigrating Senator Slama, but making sure that the statement she made was correct. Senator Slama took offense. She can do that. People are sensitive. People feel guilt. People don't have a strong sense of self. So I'm gonna give her some advice. Believe in yourself, trust your judgment, be sure you're right, and go ahead. Don't get up here whining all the time, talking about I'm a conservative-- she's a conservative. Who even cares? I'd like to have her define "conservative" for me. I've defined conservative from my understanding of how I've seen conservatives, self-confessed conservatives, behave. They are racists. They're misogynists. They are backward, not backward-- they are not merely backward, they are not merely reactionary, they are totally off the scope. In these last stages of the session, get ready for all these kind of conversations. I don't care how much time it takes. I don't care who says something that I disagree with. If I disagree, I'll stand up and express my disagreement. And that's what we all should do. But remember this, if you put yourself in a position where you're vulnerable, people are gonna take advantage of that. I, Senator Slama, am not interested in you to the point where anything I do swirls around you. I'll tell you what made me say something about you. I was watching how you all-- and you were one of them-- standing up and you all had a concerted effort to keep us from getting to Senator Pansing Brooks's prison reform bills. And then you read the, the Gettysburg Address. There's no need for that. It's so clear to us what you all are doing when you do it. You think that we're blind; that you're so clever, we don't know. You

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

are not the leader, Senator Slama. You were just one of the foot soldiers following around-- following along. There were people, including the Governor, who did not want us to get to those prison reform bills. There are other issues he does not want us to get to. And as a result, we may not get to them. We might have people who are heads of committees, like the Exec Board, for example, making comments about what the Governor might want. I say to Hades with the Governor, except I don't think he'd be welcome there. There's a certain standard that even Satan requires of those who are going to take up residency in his abode. You just can't be just some run-of-the-mill scumbag. Then your Governor is quoting Donald Trump-- trying to be a miniature Donald Trump. I saw what he said about the gun bills; a possibility of people coming into this Capitol Building to a hearing with pistols strapped on their sides and automatic rifles strapped across their chest. And the Governor talks about how these people are just trying to take your rights away from you. If he had any sense or any guts, he would do what the Governor of Virginia did and said there would be no people with guns on state property. But your Governor is a wimp-- yeah, that's what I said-- because he will not stand. He and his family condemned Donald Trump until Trump told them the Ricketts family better be quiet because they got a lot to hide. Then the Governor fell in line. Momma Ricketts fell in line. Joe Ricketts fell in line. And they went from the strongest opponents of Donald Trump to his strongest supporters. And now the Governor is trotting along behind him. So when you all speak, somebody is listening to you. I don't know if anybody else does, but I do. And I hear what you say. And at the proper moment, I will bring those things to the floor and I will not say it behind your back. I'll not cut and run. And I don't need a lot of company along with me. If I decide to take over this session, I'll do it on my own. I don't have to organize people to talk about anything. And also, I know how to read. And since Senator Slama set the tone and the mood, I'm gonna show Senator Slama how she influences me. You actually-- and I'm looking at Senator Slama-- influenced me to read from some of the documents that this country holds dear. Now I don't condemn you for not having memorized the Gettysburg Address. I was saying that advisedly. And you didn't seem to take offense, you knew what I was doing. I even pretended to have to read a poem. But it might not hurt to have the Declaration of Independence read on this floor more than once, which I promise you all I'm going to do; sections from the United States Constitution, from the Nebraska Constitution, and the documents that came into existence when Nebraska was trying to be a state, why they were not allowed to be a state when they first tried because of the racism and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

the nonprotection of the right to vote for black people. And J. Sterling Morton was one of the leading racists in this state against the right of black people to vote. J. Sterling Morton-- you all didn't know that, did you? They teach you about Arbor Day and he was great. Yeah, for a white person. The ones you think are great we see as scoundrels and we see them as scoundrels because we understand what they did. And you don't. We read and you don't.

WAYNE: One minute.

CHAMBERS: Yeah, he planted trees, supposedly. That's what he was for-- make it a holiday. But there was a man called Johnny Appleseed-- that's not his real name-- who did more when it came to planting trees than J. Sterling Morton ever thought about. All J. Sterling Morton wanted to do was plant enough trees so just-- to have enough to lynch the few black men who might stand up and speak for the rights of black people as human beings. And he stood in that hall that you all have in Washington, D.C., and white people who know white history wonder why Nebraska would send a racist like J. Sterling Morton there to point out to everybody in this country that Nebraska is a racist state. Thank you, Mr. President.

WAYNE: Thank you, Senator Chambers. Clerk, for announcement.

ASSISTANT CLERK: Thank you, Mr. President. The Tribal Relations Committee will hold an Executive Session at 10:30 today under the south balcony.

WAYNE: Senator Chambers, you have a motion on the floor. You are invited to close on your motion.

CHAMBERS: Rather than close, I would withdraw it.

WAYNE: Senator Chambers, without objection, the motion is withdrawn. Continuing debate, seeing no one in the queue, Senator Hansen, you are set to close on LB1016.

M. HANSEN: Thank you, Mr. President. And good morning again, colleagues. Thank you to everybody who has worked with me and the committee on LB1016. As a reminder, this is the Business and Labor Christmas tree relating-- three bills related to the Department of Labor. It came out of committee unanimously and I would encourage your continued support of LB1016 to Select File. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

WAYNE: Thank you, Senator Hansen. You heard the close on LB1016. Those in favor of the advancement vote aye; those not in favor vote no. Have all voted who wish to? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill.

WAYNE: The bill advances. Mr. Clerk, we will proceed to General File, LB997.

ASSISTANT CLERK: LB997, introduced by Senator Morfeld, is a bill for an act relating to insurance; to adopt the Out-of-Network Emergency Medical Care Act and to provide an operative date. The bill was introduced on January 14 of this year, was referred to the Business and-- the Banking, Commerce and Insurance Committee. And that committee placed the bill on General File with committee amendments.

WAYNE: Senator Morfeld, you are recognized or open on LB997.

MORFELD: Thank you, Mr. President. Members of the Legislature, I present to you LB997, a bill that protects consumers from out-of-network surprise billing in emergency situations and sets up a framework for hospitals, providers, and insurance companies to ensure that they are paid and the consumer is protected from out-of-network billing. I introduced a similar bill last year that applied to all surprise medical bills, whether in the emergency room or for nonemergency conditions. Over the interim, I have worked and had numerous meetings with stakeholders from providers, hospitals, insurance companies, and yes, even patients. LB997 and the committee amendment presented today is a result of those meetings and hard work from across the spectrum among the industry and patients. Rather than addressing all surprise bills, it narrows the scope to just surprise medical bills in emergency situations. I want to sincerely thank everyone for their time, energy, and patience. It's truly been a team effort. So let's just step back for a moment and reframe the issue. Imagine a situation in which-- requires you to go to the emergency room. In many cases, you'll be unconscious and unable to even make a decision which emergency room you actually go to. Say you're fortunate enough to be conscious and in a position to make these decisions. You quickly look up on your health insurance app on-line or call them to make sure that your hospital is covered under your insurance plan. You show up and see several providers, maybe an ER doctor, a radiologist, and maybe even an anesthesiologist. A few months later, you get a bill for thousands of dollars and the realization hits you that the ER doc and the hospital was in-network, but maybe one of those other

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

providers were not in-network and you didn't know that. This is often what's known as a balance bill or more commonly known as a surprise bill. This happens more often than you think; to my constituents, people I know, and even some of the members of this Legislature that have come up and talked to me. How it works is this: if you are a consumer and you have insurance, there is an emergency situation, and then happen to be out-of-network and receiving those services, the consumer is now taken out of the picture in terms of the resolution of the difference in payment. That burden now rests with the provider and the insurance company. If the provider insurance company already have a contract rate, that rate will control or 175 percent of Medicare or if there is still a dispute, mediation. Since LB997 was introduced, I've had input from interested parties to make the bill more workable. The committee amendment clarifies the process by which mediation is initiated, the default Medicare percentage rate at which services are covered if there is not another contract between the provider insurance company, and adds some definitions. I know Senator Williams will go through some of those details in a minute. I want to thank those in the industry that were willing to work with me on a solution and to Senator Williams for his leadership in bringing people together. LB997 provides much-needed protections for consumers and will keep them from going bankrupt or experiencing unnecessary financial hardship and provides a clear framework to ensure fair payment is made to the providers and dealing with the insurance company. This bill is important to Nebraskans and I urge your support of the bill and the underlying committee amendment. Thank you, Mr. President.

WAYNE: Thank you, Senator Morfeld. As the Clerk stated, there are amendments from the Banking and Insurance Committee. Senator Williams, as Chair of the committee, you are recognized to open on the amendment.

WILLIAMS: Thank you, Mr. President. The Banking, Insurance and Commerce Committee amendments in AM2431 to LB997 make a good bill even better. They are the output of a collaborative effort that Senator Morfeld talked about, involving many interested parties. We now have a solid bill to tackle a very serious issue, surprise billing by out-of-network healthcare providers for emergency services. What shape will this bill take after the committee amendments are adopted? Most of the changes are found in the last two sections of the bill. There is a stylistic change in an amendment that would change the definition "carrier" throughout the bill to "insurer." With respect to emergency

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

services, if an out-of-network healthcare provider bills an insured directly, any reimbursement paid by the insurer shall be paid directly to the out-of-network healthcare provider. The committee amendments drop the requirement that the benefits be assigned to the out-of-network healthcare provider. If emergency services are performed, an out-of-network healthcare provider may bill the insurer for the services rendered and the insurer may pay the billed amount. A claim or a payment-- payments shall be presumed reasonable if it is based on the higher of (a) a contracted rate under an in-network contracted relationship between the insurer and the out-of-network healthcare provider and the same for similar services or (b) 175 percent of the payment rate for Medicare services for the same or similar services in the same geographic area. As introduced, the bill would have figured it would have been 125 percent and that is moved in the amendment to 175 percent. If the out-of-network healthcare provider deems the payment made by the insurer to be unreasonable, the out-of-network healthcare provider shall return payment to the insurer and utilize the dispute resolution procedures that are set forth in the bill. Finally, if an insurer or an out-of-network healthcare provider provides notification that it considers a claim or payment not to be reasonable, the insurer and the healthcare provider have 30 days after the notification to negotiate a settlement. If a settlement has not been reached after the 30-day period, the insurer and the healthcare provider shall engage in mediation. The committee amendments eliminate provisions, which provided that the carrier and the healthcare provider shall reach agreement through the mediation process. Those are the committee amendments. They were adopted on an 8-0 vote and the bill was advanced to General File on an 8-0 vote. And I would urge your adoption of AM2431 and your support of the underlying bill. Thank you, Mr. President.

WAYNE: Thank you, Chairman Williams. Next in the queue is Senator Kolterman. You are recognized, Senator Kolterman.

KOLTERMAN: Thank you, Mr. President. Good morning, colleagues. I rise in support of both the amendment, AM2431, as well as LB997. And I'd like to compliment the Chairman of our committee, Matt Williams, and Senator Morfeld for the hard work that they've done on this bill. They brought a lot of people together to make this happen. As an example, the insurance companies, the consumers, the hospitals, the doctors, everybody came together and worked out the challenges that were before us. And this just becomes good legislation. Thank you, Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Morfeld, for bringing it. With that, I'd yield the rest of my time to Senator Morfeld.

WAYNE: Senator Morfeld, you are yielded 4:10.

MORFELD: Thank you, Senator Kolterman, and thank you, Senator Williams. I just want to say I appreciate everybody's feedback and input. Over the last year, I've had several senators, quite frankly, come up to me with really unfortunate examples of why this bill is needed for them personally and with some of their close family members. And I just also want to say the providers and insurance companies also were forthright in telling me, yeah, this is a problem. We need to figure it out, particularly in emergency situations. So it's been a great example of how we can actually achieve reasonable reform when it comes to healthcare. And I just want to thank everybody. Thank you, Mr. President.

WAYNE: Thank you, Senator Morfeld and Senator Kolterman. Senator La Grone, you are recognized.

La GRONE: Thank you, Mr. President. I rise in support of both AM2431 and LB997. I'll be quick. I will just say that last year, we heard that Congress was going to act on this issue and that's why we didn't act on Senator Morfeld's previous version of this bill and then they failed to do so. And I really want to compliment Senator Morfeld. This is an incredibly complex issue that he did yeoman's work on to get done. And now I think that even though Congress hasn't yet acted, this can be a beacon for them to follow. And I really appreciate, also, Senator Morfeld, committee in that when that hopefully does happen, to make sure that we can make these two work together. So should he like the rest of my time, Senator Morfeld is more than welcome to it.

WAYNE: Senator Morfeld you are yielded 4:14.

MORFELD: Thank you, Senator La Grone. The only thing I'll say on the federal reform is that, one, we don't know if it's gonna happen and it hasn't happened yet. And two, if, for instance, they do pass something, which I think would be great, actually, then I'm more than willing to work with Senator La Grone and the Banking and Insurance Committee to make sure that this doesn't conflict with the federal reform moving forward. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

WAYNE: Thank you, Senator Morfeld and Senator La Grone. Senator Groene, you are now recognized.

GROENE: Thank you, Mr. President. You talk about collegiality around this place. It does happen. It happens all the time. We hear about the instance where somebody's bill didn't get passed and they blame it on politics. But I'll tell you what, I cosigned onto Senator Morfeld's bill. This is a very, very good bill, badly-needed bill. Nebraska, you might not realize-- I'll put it in simple terms. What happens is you have insurance, you've done your due diligence and had insurance. You're out in rural Nebraska in a regional medical center-- because this is a personal thing that happened to one of my members of my family-- and you have a crisis. You have a really bad crisis. And you're in the hospital and there's only one surgeon in town that can do the operation. And he's called and he does the operation. It comes time to pay the bill with insurance, surgeon wouldn't take the money. This was back in the time when CHI was fighting with Blue Cross-- wouldn't take the payment. Had insurance-- insurance company wouldn't pay the patient so that the patient could then, then pay the doctor. No, it had to go right to the doctor. They're facing bankruptcy now. They had insurance. Nebraska, can you believe that happens? It does and it happens more than you realize. This bill will fix it. Senator Morfeld is addressing a situation I think is one of the more important bills to the people of Nebraska that's gonna pass this year. It's not a big bill, but it fixes an injustice. It fixes a bad injustice. Imagine you buy insurance and then somebody says, I'm not gonna take it. That's what this fixes. So I'm very happy to be-- to have signed on this morning to the bill. I read it. It's a very good bill. Good legislation gets bipartisan support. It always will and always has in this body. This is good legislation. Thank you, Mr. President.

WAYNE: Thank you, Senator Groene. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. Senator Morfeld, would you yield to a question?

MORFELD: Yes.

FRIESEN: Thank you, Senator Morfeld. How often have I been with you on a bill that you've brought?

MORFELD: I honestly can't remember the last time. [LAUGHTER] Actually, I think you've been with me on a few of my priority bills, so--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

FRIESEN: OK, I do appreciate bringing this bill because I think it is needed and, and no one wants a surprise bill like this because you don't have a choice. And so basically the points are-- is that when you're in an accident or whatever the emergency is, you don't have a choice and they'll-- a rescue unit or whatever will take you to the nearest hospital and you have no choice, is that true?

MORFELD: Correct.

FRIESEN: And so when you get to that hospital, if it's out of your network, that's when the insurance companies will say, well, you're out-of-network, now we can't pay at the rate. You're charged full rate. And the difference between what's paid and reimbursed, the patient has to pick up that difference.

MORFELD: Yeah. I mean, it's, it's obviously an interaction between the insurance company and the provider and then the, the patient is the one that's left with the bill.

FRIESEN: And so if there is a dispute down the road, even with this bill now, how does that get settled?

MORFELD: Even with this bill? So what it-- what happens is it's a mediation process. So if-- so let me step back for a second. What happens is if somebody is brought to the hospital and they have insurance-- they have to have insurance-- and then they're out-of-network and then they get a-- under, under the bill, what would happen is if the hospital or provider had a contract rate already with the insurance company for some other network or something like that, then that would, that would be the rate. If they don't, then it goes to 175 percent of Medicare. If the hospital or provider doesn't think that that's a fair rate, then they can go to mediation-- the mediation process with the insurance company. And if they don't think that's fair, they can always go to court. I mean, that's still an option.

FRIESEN: So they still just need a basic level of health insurance and that's taken care of?

MORFELD: Yeah.

FRIESEN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

MORFELD: It takes the consumer out of it and it creates a process by which the provider and the insurance company resolves the dispute between them, not the patient.

FRIESEN: OK. Thank you, Senator Morfeld. I do stand in support of the bill. I think it's a, it's a great idea. And I think it does take some uncertainty out of-- when you're traveling of what may happen and how insurance companies treat you. So with that, I stand in strong support. And with that, thank you, Mr. President.

WAYNE: Thank you, Senator Friesen and Senator Morfeld. Seeing no one else in the queue, Senator Williams, you are recognized to close on the committee amendment.

WILLIAMS: Thank you, Mr. President. And good morning, again, and thank you for the questions that were asked to Senator Morfeld. I would, again, encourage everybody to vote green on the amendment and the bill. This is legislation that is important. These situations do happen and it's our responsibility, as a Legislature, to pass legislation that helps with this. Again, democracy works when we engage in thoughtful compromise. Senator Morfeld led a great group of stakeholders over a significant period of time to bring them together on the issue and find that common ground that we can pass legislation that really does help all of our constituents. With that, I would encourage you to advance AM2431 and then advance the bill. Thank you, Mr. President.

WAYNE: Thank you, Senator Williams. The question is shall the committee amendment to LB997 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 38 ayes, 0 nays on the adoption of committee amendments, Mr. President.

WAYNE: The amendment is adopted. Discussion on the advancement of LB997 to E&R Initial. Senator Groene, you are recognized.

GROENE: I just wanted to make sure that everybody knew this was not my regional hospital that this happened at-- in North Platte. It happened somewhere else, but I won't name it. But it is a good bill. That's all I wanted to say. It should have been done a long time ago. And-- but if Senator Morfeld can get insurance companies and medical facilities to do something, maybe we can do some other things. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

WAYNE: Thank you, Senator Groene. Seeing no one else in the queue, Senator Morfeld, you are recognized to close on LB997, as amended.

MORFELD: Thank you, Mr President. Colleagues, thanks for the support. I'm waiting for the chandelier to fall down on me here, so I'll make it brief and just say this is a good bill. Hopefully there is federal reform down the road, but in the meantime, we can't leave Nebraskans hanging. Thank you, Mr. President.

WAYNE: Thank you, Senator Morfeld. The question is the-- seeing no one else in the queue, the question before the body is the advancement of LB997 to E&R Initial. All those in favor vote aye; all those opposed vote nay. All those voted who wanted to vote-- who wish to vote? Record, Mr. Clerk.

ASSISTANT CLERK: 43 ayes, 0 nays on the advancement of the bill, Mr. President.

WAYNE: The bill advances. Mr. Clerk, for items for the record.

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Business and Labor reports LB1060 to General File as well as LB963 to General File with committee amendments attached. Priority bill designations: LB1186 by Senator Albrecht; LB1002 by Senator Bostelman; LB1053 by Senator Howard-- that being a Health and Human Services Committee priority bill; LB1144 is Health and Human Services' priority bill; LB1158 by Senator Arch; and LB1202 by Senator Linehan. An amendment to be printed to LB770 by Senator Gragert. In addition to that, Mr. President, the Urban Affairs Committee will hold an Executive Session in Room 2022 at 11:00. That's Urban Affairs, Room 2022 at 11:00. That's all I have at this time.

WAYNE: Thank you, Mr. Clerk. Senator Hughes would like to announce that Nebraska Petroleum Producers Association members are seated in the north corner-- north-- underneath the north balcony. Please rise and be recognized by your Nebraska State Legislature. I also want to mention that former Senator Baker is underneath the north balcony along with the group of Nebraska Petroleum Producers Association members. Great to have you back. Stand and be recognized. Moving to the next item, Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next bill, LB858 by Senator Hughes. It's a bill for an act relating to the Municipal Cooperative Financing Act; to redefine terms; change provisions related to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

qualifications, removal, terms, and votes by directors, provisions relating to municipality participation, termination, expulsion, suspension, and provisions relating to bonds; change an audit filing deadline; change agency restrictions; harmonize provisions; and repeal the original sections. This bill was introduced on January 9 of this year, referred to the Natural Resources Committee. That committee placed the bill on General File with committee amendments.

WAYNE: Thank you, Mr. Clerk. Senator Hughes, you are recognized to open on LB858.

HUGHES: Thank you, Mr. President. Good morning, colleagues. I present for your approval LB858, which is the first of the Natural Resources Committee priority bills. There are a total of four bills in this committee bill. I will first cover LB858, then open on the committee amendment, which contains the provisions of the other three bills. LB858 has four simple purposes. We organize, authorize, simplify, and streamline the governance of the Municipal Energy Agency of Nebraska, which is better known as MEAN. MEAN was created in 1981 under the Nebraska Municipal Cooperative Financing Act, giving the-- giving it the authorization to generate, transmit, and distribute wholesale electric power and energy. MEAN currently serves 69 communities in 4 states. MEAN is a nearly 40-year-old political subdivision of the state of Nebraska. And like all public power entities, it is facing new opportunities and challenges. Its governing law has not been updated for almost 40 years and this bill contains updates, improvements, and housekeeping changes to help modernize MEAN's governance model. This bill has very few new concepts. Almost all of them have previously been approved by the Legislature in the power district statutes and public suppliers statutes. The bill will reorganize, update, and simplify the basic governance of MEAN. LB858 gives MEAN's board, MEAN's board greater control over director qualifications and votes. MEAN's governing body is very large; almost 70 individuals. This bill makes practical changes to the board qualification requirements and extends the term limits currently in place. The bill also lays out a fair and more just procedure for suspending a member. LB858 authorizes a joint action agency comprised of municipalities to join MEAN, yet still be governed by Nebraska law. MEAN has served, has served electricity to another similar small agency in Colorado and LB858 would allow that agency to sit on MEAN's board as a voting member. However, that agency must still be comprised of municipalities similar to MEAN. LB858 simplifies the law by deleting the requirement that construction, maintenance, or remodeling

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

of the agency's headquarters constitutes a power project of the organization. And the bill also removes the requirement for a certain type of security bond that allows for security by insurance coverage. Lastly, LB858 streamlines authority and permits MEAN to sell assets from time to time to other public agencies such as power districts, power plants, municipalities, and electric generating plants. By these actions, the bill will allow MEAN to effectively serve its communities for another 40 years. Mr. President, if I could, I would like to open on the committee amendment at this point.

WAYNE: Thank you, Senator Williams-- I mean, Senator Hughes. Go ahead and open on your committee amendment.

HUGHES: Thank you, Mr. President. AM2346 is the Natural Resources Committee's first package bill and has been given priority by the committee. The amendment substitutes for the bill and contains the provisions of LB858, which I just discussed, as well as provisions from LB367, LB855, and LB856, as introduced. These bills were all unanimously approved by the committee. LB856 contains an emergency clause, which only applies to the provisions of LB856. But LB858, as an amendment, would still require 33 votes to pass on final reading. The committee amendment contains the provisions of LB858, as introduced, which contained in Sections 1 through 13, and Section 21, and 23 of the committee amendment. LB856, the second bill contained in the committee amendment, which would extend the sunset date for the Petroleum Release Remedial Action Cash Fund. This is also known as the Leaking Underground Storage Tank or the LUST Fund. The authorization of this fund is set to expire June 30, 2020. LB856 would extend that date to June 30 of 2024. Petroleum retailers pay a per-gallon fee to this fund to provide financial assistance for the clean up of petroleum storage tank leaks and contamination. It currently contains about \$4.5 million. This fund is overseen by the Department of Environment and Energy. This fund can award reimbursement for the cost of remediation action, including reimbursement for damage and clean up. This bill contains an emergency clause that would take effect when passed and approved. The provisions of this bill are found in Sections 14 through 17, Section 22 and 24 of the committee amendment. The bill was introduced by Senator Moser. LB855, the third bill contained in the committee amendment tree, it-- this bill removes a section of the state statute that requires legislative confirmation on appointment of board members to the Niobrara Council. The Niobrara Council was founded in 1997 and confirmation wasn't required by the Legislature until 2016. The Niobrara Council's excellent track record and the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Legislature's 100 percent approval rate of the Niobrara Council nominees suggests that the legislative approval is not necessary. Overall, removing legislative confirmation of the Niobrara Council board members because it is not needed, takes the Legislature off the burden-- takes the burden off the Legislature and the board members themselves. This provision is-- of the bill is contained in Sections 18, 21, and 23. The bill was introduced by Senator Moser. The fourth and final bill in the committee amendment is LB367, which extends the sunset date for the Litter Reduction and Recycling Fund to September 30, 2025, from its current termination date of October 30 of this year. The provisions of LB367 are found in Sections 19, 20, 21, and 23 of the committee amendment. Funds for this program are provided from the annual fee assessed to manufacturers, wholesalers, and retailers having gross receipts of at least \$100,000 on products that commonly contribute to litter. Approximately \$2 million is received annually. The funds are then used to award grants for litter reduction and recycling programs throughout the state. The bill also eliminates the Legislature's ability to make transfers from the General Fund-- to the General Fund from the Litter Reduction and Recycling Fund. This will prevent the fund from being swept. Again, each of these bills was overwhelmingly supported and unanimously approved by the committee. Thank you for your consideration of these four bills. Thank you, Mr. President.

WAYNE: Thank you, Senator Hughes. The floor is now open for debate. Seeing no debate, Senator Hughes you are recognized to close on the committee amendment. Senator Hughes waives closing. The question is, the question is, shall the committee amendment to LB9895-- I'm sorry, LB858 be adopted? All those in favor vote aye; all those opposed vote nay. All those-- have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments.

WAYNE: The amendment is adopted. Discussion on the advancement of LB858, as amended, to E&R Initial. Seeing no one in the queue, Senator Hughes, you are recognized to close on the bill.

HUGHES: Thank you, Mr. President and thank you, colleagues. I appreciate that. I just want to take a moment to thank the members of the Natural Resources Committee for all the work on all four of these bills. These are good bills and I certainly would appreciate a green vote. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

WAYNE: The question is the advancement of LB858 to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 41 ayes, 0 nays on the advancement of the bill, Mr. President.

WAYNE: The bill advances. Next agenda item.

ASSISTANT CLERK: LB790, introduced by Senator Slama. It's a bill for an act relating to state purchasing; to provide exceptions to certain bidding requirements and contract approval procedures; to provide and change powers and duties of the materiel division of Department of Administrative Services; and repeal the original sections. This bill was introduced on January 8 of this year. It was referred to the Government, Military and Veterans Affairs Committee. That committee reported the bill to General File with no committee amendments.

WAYNE: Thank you, Mr. Clerk. Senator Slama, you are now recognized to open.

SLAMA: Thank you, Mr. President. And good morning, colleagues. I rise today to introduce LB790, which was prioritized by the Government, Military and Veterans Affairs Committee. LB790 is a bill to authorize the Department of Administrative Services to use group contracts entered into the political subdivisions of other states. The bill also authorizes the state purchasing bureau to take the lead in negotiations when collaborating with other government entities. Currently, Nebraska is a member of the National Association of State Procurement Officials, also known as NASPO. NASPO is a nonprofit association whose focus is to help its members achieve success as public procurement leaders in their states through promotion of best practices, education, professional development, research, and innovative procurement strategies. It is made up of the directors and staff of the central procurement offices in each of the 50 states, the District of Columbia, and the territories of the United States. As a member of NASPO, Nebraska has the ability to purchase off of and negotiate with Nebraska political subdivisions for goods and services. An example of this is our current parking technology in Lincoln. The city of Lincoln owns the contract for the technology and the state has attached themselves to that contract. We would like the ability to do the same with political subdivisions of other states. This is advantageous to the state because a political subdivision of another state with a contract Nebraska is looking to join would have already

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

researched and vetted out the product, saving the state's funds and time in doing the research themselves. Thirty-eight other states already have this authority. The use of just one of these contracts for paper and plastic products is projected to save \$448,000 annually. As a member of NASPO, states can be designated as lead states for contract negotiation purposes on NASPO contracts. For example, if multiple states need to bid on an office supply contract, NASPO will contact a lead state. If Nebraska is selected to be the lead state, then it would bid, negotiate, and write the contract. This is advantageous for a couple of reasons. It can lower the price of goods since multiple states will be buying off of the contract and it will-- it can lead to more rebates for Nebraska as a lead state. Higher rebates help fund the program and keep assessments low. Lead states are reimbursed for their procurement work so that no internal state resources are expended for cooperative contract work. The administrative fee for lead states is the lowest among competing cooperatives and does not negatively impact contract pricing. However, in statute, Nebraska currently cannot be named a lead state and LB790 would resolve that. There are currently 23 states that are leading at least one project. Another 13 states are leading on more than one project. Nebraska's neighboring states of Colorado, Iowa, Minnesota, and Oklahoma are all lead states and are currently leading projects. Nebraska wants to be able to join this group. Passing LB790 would give Nebraska another tool to negotiate and purchase products and possibly do so at a lower cost. LB790 was advanced unanimously from committee and one of the few questions that was asked at the hearings was why haven't we done this sooner? So this is a good bill that will save our state money. AM2436, which will be introduced by Senator Brewer here shortly, is an amendment that incorporates Senator Hilgers' LB890 and its accompanying committee amendment. And we will explain that in the committee amendment's introduction. Thank you, Mr. President.

WAYNE: Mr. Clerk.

ASSISTANT CLERK: Mr. President, Senator Slama would move to amend with AM2436.

WAYNE: Senator Slama, you are recognized to open on your amendment.

SLAMA: That was my fault on the drafting there, I thought it was a committee amendment so apologies there. AM2436 incorporates the parts of Senator Hilgers' LB890. And I would like to allow Senator Hilgers

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

to explain a little bit more about what that bill does. So if possible, I'd like to yield him the remainder of my time.

WAYNE: Senator Brewer-- Senator Hilgers, I'm sorry, you are yielded 9:30.

HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise in support of LB790 and AM2436, which, as Senator Slama mentioned, is my bill, LB890, which was heard in Government Committee. I want to thank Senator Slama and I want to particularly thank Chairman Brewer and the members of the Government Affairs Committee [SIC] for the priority of this bill, the underlying bill and the amendment. And I'll just speak very briefly as to what LB890 does. LB890 is an extension of an authority that we have granted, first at the state level then at the county levels last year, to help local subdivisions-- political subdivisions have the authority to use design build. So what ultimately this does-- will save taxpayer dollars and save time on major construction projects. So to just give you a little bit of history that, that-- through these types of bills that have gone through this body, in 2015, the first bill went through to allow the Department-- the State Department of Transportation to do design build and what design build does-- it allows you to, to do some of the task of building a major construction project in parallel with one another. Instead of doing them all sequentially, design then build, you can do them together at certain points, which allows you to do it more, more efficiently, faster, and save money. So the first grant of authority was only to the state, the Department of Transportation. Last year, I introduced a bill that went through this body and passed, I believe, without opposition to expand that authority to certain political subdivisions, specifically counties. And now LB890 is to expand that a little bit further to allow political subdivisions to have that as it relates to sewer projects. There was one, there was one opponent at the hearing and we worked through some language on an amendment, which is part of the white copy of AM2436, which would allow these projects to go forward, but would put some-- would, would, would require the political subdivision before they'd use design build to have a resolution basically saying, hey, look, we've looked at this and this is gonna save some money. So that, ultimately, is what the resolution is intended to do. And so this won't apply, probably, to too many projects, but it will apply to some and I think, certainly, here in Lincoln. It's a tool that we'd like to have in our tool box as we-- as Lincoln looks to improve its sewer system. So we think it'll save money, save time. It's good for taxpayers. And this will be another

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

bill, I hope, that will be-- that will pass with large support of this body that the other two bills have-- has had-- have had previously. So with that, I'm happy to answer any questions, but I'd ask for your green light on AM2436 as well as the underlying bill. Thank you, Mr. President.

WAYNE: Thank you, Senator Slama and Senator Hilgers. We are now open for debate. Senator Hilgers, you are next in the queue. Senator Hilgers waives. Senator Kolterman, you are now recognized.

KOLTERMAN: Good morning, colleagues. Thank you very much, Mr. President. I rise in opposition to this bill and I don't, I don't take it lightly. I, I talked to Senator Slama. I have a few problems with the bill. First, in Section 1 of this bill, it, it expands the authority of DAS to procure sole source contracts for political subdivisions of another state and cooperative purchasing organizations on behalf of a group of political subdivisions. Sole source contracts are noncompetitive procurements that allow a single supplier to fulfill the needs of the contract. We're essentially allowing DAS greater authority to avoid competitive bidding laws and to spend tax dollars in backroom deals, in my opinion. Open competition lets the best companies offer us the best services and products at the best price. Sole source contracting avoids competition. Without open competition, this bill could lead to a situation that does not allow taxpayers and the Legislature to exercise proper oversight over DAS expenditures or our tax dollars. Secondly, I'd like to explain why I oppose this bill without reforming our current procurement process first. Current Nebraska law provides no express right of judicial review of agency award decisions, even on massive contracts such as Heritage Health. Existing protest procedures only allowed disappointed vendors to write a protest letter and to meet the director of DAS, whose discretion is unlimited and whose decision is not formally subjective to judicial review. Because the existing protest procedure is not defined as a contested case, it does not fall within the Administrative Procedures Act. So Nebraska law allows a Medicaid beneficiary, who loses coverage for a \$200 medical bill procedure, a full administrative hearing, discovery, and substantial-- and subsequent judicial review. But a bidder who bids on that million-dollar Medicaid contract has no hearing rights, no discovery rights, and no judicial review. Over half of the states in the United States federal government provide for judicial review of procurement decisions without a limited appeal process, which gives great-- greater certainty to bidders that they will be treated fairly by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

providing for limited judicial review. I cannot support giving DAS more authority. That's the bottom line. We're giving them more authority to contracts for local subdivisions of this state or even other states. I had a bill that I brought to the committee last year. It was LB21 and it dealt with the concerns that I'm expressing today. It was-- there was absolutely no negative testimony on that bill other than DAS. And all we were trying to do is put in some judicial review and, and make it so that major corporations that are willing to bid on multimillion dollar contracts have the ability to have a fair hearing if, if they don't get the award. That will not happen if this bill passes. I don't think that's, that's good for our state. I don't think that's good oversight for our Legislature and that's why I have to oppose this bill. With that, I appreciate it and I'll have more to say, but I wanted to get my thoughts across. Thank you very much.

WAYNE: Thank you, Senator Kolterman. Senator McCollister, you are recognized.

McCOLLISTER: Good morning, colleagues. Thank you, Mr. President. I have a few questions with regard to this bill and I think the proper person to ask would probably be Senator Hilgers. Would he yield to a few questions?

WAYNE: Senator Hilgers, do you yield to a question? I do not see Senator Hilgers on the floor.

McCOLLISTER: All right, let's, let's go to Senator Slama. Maybe she can pinch-hit here. What projects would this bill be subject to? What--

WAYNE: Senator Slama, do you yield to a question?

McCOLLISTER: And the question is, Senator Slama, what bidding projects would LB790 apply to; is it all bidding, all bidding opportunities or are there certain specific opportunities that would-- this, this kind of thing would apply?

SLAMA: It would be the same bidding opportunities that are already outlined in statute, except we would now include political subdivisions in other states. So, for example, like in my opener, I explained that we currently have a contract with the city of Lincoln for the parking technology. This would allow DAS to enter into those contracts; where if we were seeking that technology, enter into a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

contract with Des Moines or Kansas City. This is all about efficiency and getting the best rates for our taxpayers.

McCOLLISTER: Yeah, thank you. So would that limit the competition to only one bidder?

SLAMA: No.

McCOLLISTER: So if the city of Lincoln had other bidders looking at that opportunity or that proposition, would they be forced to at least consider applications from other bidders?

SLAMA: There would be no forcing of anyone to do anything. This merely adds in a line that says we can-- DAS can do exactly what it's doing now, except it can also enter into these deals with political subdivisions of other states.

McCOLLISTER: Thank you. Would Senator Hilgers yield to a few questions?

WAYNE: Senator Hilgers, would you yield to questions?

HILGERS: Absolutely.

McCOLLISTER: Would this bill, Senator Hilgers, enhance competition for estate contracts or not?

HILGERS: Are you-- just to be specific, Senator McCollister, AM2436 is my bill. Is that what you're referring to or--

McCOLLISTER: Yes, I am.

HILGERS: It would-- it's-- that's a good question. I don't know how to answer that precisely. The intent is to allow certain providers to be able to offer services that would save taxpayers money by doing design build instead of design bid build. Whether that would enhance the competition or not, I'm not sure. It would save taxpayer money though, I believe.

McCOLLISTER: But in that process, do they ever take competitive bids or consider a wide range of, of suppliers or builders?

HILGERS: You know, I think it depends on the project. I mean, these are intended to be for larger projects, Senator McCollister, and I certainly-- if you're adding a design build element, not every

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

contractor-- and this is one of the concerns that we had from the opponents. Not every contractor has the capability to do design bids. So to some degree, it might impact those contractors who could bid.

McCOLLISTER: As a former supplier of the state of Nebraska for specific products, sometimes the, the specifications are so narrow that you only end up with one supplier. And that's what I'm anxious to avoid-- is to end up with no competition for some of the services that could be supplied. And I'll be anxious to listen to the debate to make certain that we've enhanced competition instead of reduced competition. Thank you, Mr. President.

WAYNE: Thank you, Senator McCollister, Senator Slama, and Senator Hilgers. Senator Kolterman, you are recognized.

KOLTERMAN: Thank you again, Mr. President. I have a, a couple of things that I want to continue to talk about. Under our existing procurement system, no matter how large the contract is, is being procured by the state, bidders, at the present time, have no right to an agency hearing. They have no right to judicial review and they have only the right to send a letter and have a meeting with DAS. That's it; that's where it stands right now. The state has long taken the position that bidders are not entitled to review by any court of the agency's award decision. So as you can imagine, the lack of judicial review is extremely frustrating to large businesses, businesses that come from all over the country that want to invest thousands of-- hundreds of thousands of dollars and man hours into a bidding process for large procurements. Large companies spend significant resources deciding whether to bid on Nebraska's upcoming bids or not and then preparing their proposal. Sometimes these proposals are hundreds of pages long and they assemble teams of-- a large group of teams to prepare these bids and then they, then they participate in the, in the quality process; the oral presentations and the like. After voting all these resources, they expect some transparency in the process. They expect some basis for understanding the state's decisions. And if there is no process, they often will not return to the state. That's a concern that I have. We have huge national companies that have been shut out on their bids or just said, no, we're not gonna accept your bid. And the next thing you know, somebody else gets the bid. And there's no, there's no appeals process other than going to court and suing. That costs the state money and that costs the taxpayers dollars. So here's a question that I want, I want you to contemplate: the bill that I had last year, LB21, dealt with this procurement

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

process and due process. And, and we patterned it after Iowa's procurement laws. What would happen if Nebraska and Iowa decides that they want to team up for a purchasing agreement, but Nebraska purchases a contract for the two states? So we, we would do the bidding for the two states. Since Nebraska executed the contract for the two states, how Iowa's procurement laws that allow for judicial review-- how would they interact with our Nebraska procurement law that does not allow for judicial review? Could you see Nebraska being sought out to be the purchaser for states who have judicial review on procurement decisions as an end around so they don't have to apply; so Iowa wouldn't have to worry about the procurement decision challenges because they've already got it covered in Nebraska? That's what we're allowing for if this bill passes, in my-- the way I'm reading it. There's been countless numbers. I can tell you that. Protests; let's talk about some of the protests that have occurred since 2014. In 2014, there were five protests with DAS and two of them were in the range of \$5 million. In 2015, there was one protest. It was in the range of \$5 million. In 2016, there were ten protests and eight of those were in the range of \$5 million. In 2017, there were ten protests; three in the range of \$5 million. And in 2018, there were three protests; one in the range of \$5 million. I just think that we need to be aware of the fact that if we pass this legislation, we're giving DAS more authority and we're--

SCHEER: One minute.

KOLTERMAN: --taking things out of there. Is that time?

SCHEER: One minute, Senator.

KOLTERMAN: Thank you. It's taking, it's taking oversight and overview away from us, as a body, and it's giving DAS an administrative side of the-- the side of the equation. And I, I just feel like we, we owe it to ourselves to at least examine this a little bit more thoroughly. I'm not, I'm not against giving more authority to DAS if there's a proper procedure in place for, for protesting or challenging the decision that they make. At this time, there is not and I think we're getting the cart before the horse. Thank you very much.

HUGHES: Thank you, Senator Kolterman. Senator Hilgers, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

HILGERS: Thank you, Mr. President. Good morning again, colleagues. I was wondering if Senator Kolterman would yield to a quick question?

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Yes, I will.

HILGERS: Thank you, Senator Kolterman. So I've, I've been listening to your remarks. I just want to make clear, for the record, your objections are to the underlying bill, LB790, is that right?

KOLTERMAN: Yes, they are.

HILGERS: Have you taken a position on the amendment, AM2436, which is the design build bill relating to sewer systems?

KOLTERMAN: No, I have not.

HILGERS: OK, so at least least so far, your comments are to the underlying bill and not my bill?

KOLTERMAN: They are.

HILGERS: OK. Thank you, Senator Kolterman. I wanted to follow up-- I had a good conversation with Senator McCollister on the mike. I did want to address some of the concerns that he raised as to whether design build, which is the amendment to this bill, whether that would reduce competition. And ultimately, what, what the design build would do would-- it would allow-- well, what it already does, by the way, for the state and counties, is allows those state and counties, for certain projects, to use the design build process to shorten some major construction projects to save money and get them done faster. I think that's a good thing. That's a good thing that this body has agreed as a good thing and these-- those-- both of those previous bills have passed without opposition. What AM2436, which is LB890, would do-- would just extend that authority in a very limited way, which would allow that authority to be used for certain sewer projects. So the principle that we've been operating under the last five years is the same one here, it's just in a slightly different context, which is-- instead of just all highway-- major highway construction is now for sewer projects. So I think the answer is the same, though, which is to say that there are certain-- there are contractors, maybe many contractors, that can do design build projects. When that bid comes out, it's still a, it's still a bid process that you would normally have. It doesn't impact that bid

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

process. All it does is say as part of that bid process, you can use a design build. So to the extent that there are multiple contractors who can do design build projects, they can, they can compete and put in multiple bids and that process remains the same. To some degree, it does impact-- if there are some contractors who can't do both the design and the build, that might impact their ability to bid, which is one of the concerns that was raised by the opponents to this bill, which is what the amendment tried to address. So I think this is-- I think it's a good question from Senator McCollister. I appreciate the dialog that we've had, both on and off the mike. I do want to make clear that, though, that this is a process we've had for many projects in place over the last couple of years and should not ultimately impact the ability-- the, the normal bidding process for design build projects to the extent that there are many contractors who could do that, do that work. They can still compete with each other to provide taxpayers with the lowest costs. I'm happy to answer any other questions or talk to Senator McCollister on or off the mike, but I'd urge your green light on AM2436. Thank you, Mr. President.

HUGHES: Thank you, Senators Hilgers and Kolterman. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. Good morning, Nebraskans. Our state's unique motto is "Equality before the law." So know that whoever you are, wherever you are on life's journey, and whomever you love, we want you here. You are loved. So I'm standing today because I have some great concerns about this bill. And no, Senator Slama, I'm not going to read the constitution in this one. So I was just trying to figure out-- maybe I'll ask Senator Slama some questions if, if she would? Mr. President?

HUGHES: Senator Slama, will you yield?

SLAMA: Yes, I do.

PANSING BROOKS: Thank you. Thank you, Senator Slama. Aren't you glad I'm not reading the constitution?

SLAMA: I'm thrilled.

PANSING BROOKS: Yeah, that's what I figured. So I am, I am trying to wrap my head around this because as I read the bill and as I look at the summaries and different things have been passed out to me, this looks like it basically gives DAS free reign to make any contract, use

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

any state dollars they want, and basically, in my opinion, leads to privatization of many areas of our state. So it could ultimately do that. So can you explain why this would not lead to privatization and the ability of DAS to control all monies and the Legislature to have very little control? And if everyone's worried about tax-- property taxes, pay attention now because this thing is sliding under the radar, in my opinion. So go ahead, Senator Slama, if you have any answers to that?

SLAMA: Thank you, Senator Pansing Brooks, for that great question. And I would just like to reiterate that this absolutely does not lead to the privatization of anything. There is no ghosts or ghouls in this bill; 38 other states already do the exact same process that we're doing with LB790. It had absolutely no opposition in its committee hearing. Moreover, the one of two questions asked in the committee hearing was why aren't we doing this earlier? LB790 is not some sort of expansion of government power. It does not provide for overreach. It merely allows DAS to get the best deal possible for our taxpayers. I, I do have to push back against any ideas that this may somehow raise costs for our taxpayers when in reality, LB790 does the exact opposite of that.

PANSING BROOKS: Well, we all know the, the mess that happened with, with Heritage Health and basically, there have been contracts. And so it seems to me that if, if anybody is protesting a contract by DAS, they just have to, basically, file a lawsuit because this allows them to do-- DAS to do about anything they want.

SLAMA: Under LB790?

PANSING BROOKS: Yes.

SLAMA: I do not agree with that assessment of the bill and I believe that points to a larger concern that Senator Pansing Brooks, Senator Kolterman have with DAS that is not necessarily attached to this bill.

PANSING BROOKS: OK. I am also interested-- you know, we have had issues with DAS, with the YRTCs. The YRTCs were handling their own, their own maintenance and refurbishment of their facilities. And one of the problems that occurred that really sort of led to the mess we're in now with the YRTCs was the fact that DAS could not move and, and work to fix the problems that occurred at YRTC Geneva without getting the--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

HUGHES: One minute.

PANSING BROOKS: They couldn't-- that the YRTC Geneva could not get anything fixed because they had to wait and go through all the melee of regulations with DAS so could you speak to that?

SLAMA: Absolutely, this seems to be a larger concern with DAS that's not covered in this bill. Thirty-eight other states already give their states this power to enter into agreements with political subdivisions of other states and be lead states in negotiations. Again, I'd just like to reiterate that LB790 merely allows DAS to enter into the same contracts through the same process that we already have in place--

PANSING BROOKS: So--

SLAMA: --with other subdivisions or be a lead state.

PANSING BROOKS: Thank you, Senator Slama. So do you believe Nebraska DAS has the qualifications, legal staff, and budget to be undertaking bidding and contracting duties for other--

HUGHES: Time, Senators.

PANSING BROOKS: --like other states?

HUGHES: Thank you, Senator Pansing Brooks and Senator Slama. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Colleagues, this is a worthy subject of debate; it truly is. I was involved with the Platte West construction, where MUD spent \$350 million building a water treatment plant on the, on the Platte River. And we did that through design build. In and of itself, it can be a good system. It's not inherently uncompetitive, but you've got to do it right. It does, in fact, save money because the, the contractor that you would choose can figure out the plans that you're gonna use and maybe save some money. So it is, it is a good system. And we did, in fact, save money when we chose that contractor. But what is essential is you need to introduce competition when you select the person to do the design build contract. Would Senator Hilgers stand for a couple more questions?

HUGHES: Senator Hilgers, will you yield?

HILGERS: Absolutely.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

McCOLLISTER: We talked off of the mike and we talked about the process that should be used to determine who a builder-- what builder should be selected on a design process. Are we saying that the competition enters into the process when they pick the, the builder to do the design process work?

HILGERS: Absolutely, I think it does. It's just like a normal bid process. It's a competitive bid process. None of that criteria changes. It's just one additional piece that, that the political-- the city could use in this instance to actually use as a criteria for selecting the, the contractors that apply.

McCOLLISTER: And in this particular amendment, your amendment, AM2436, does that-- can it be utilized by cities, counties, or simply the state of Nebraska?

HILGERS: So this-- it doesn't apply-- its political subdivisions. So this is to extend-- so I think that it would include cities, counties for sewer projects.

McCOLLISTER: Thank you, Senator Hilgers. I yield the balance of my time.

HUGHES: Thank you, Senators McCollister and Hilgers. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President, and thank you, colleagues. This is an interesting bill because I was trying to figure out what it did last night. But for anybody in the body who wants to know why this bill is interesting and now concerning to me is because I actually practice in this area. I actually sued the city of Omaha twice. One actually-- we actually went with all the way through the lawsuit and ended up settling out of court. The other one, we stopped premature. And the reason why this is important is because of many of the things Senator Kolterman talked about. At the end of the day, we don't have protections for what we call disgruntled bidders. So in one particular case with the Health and Human Services, it was about \$1.6 billion we ended up, kind of wasting, not all of it. But part of it was a small company out of Arizona-- and I'm passing out some information of some attorneys who wrote an article on this problem in Nebraska with procurement-- but what happened was they bid a job and it was a three- or four-person firm to redo HHS system and it was a tune of about \$1.6 billion. Some major companies who also bid on that said there's no way they can do it for that price. So they actually sued the state of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

Nebraska and were thrown out of court and the court reasons is there is no liberty interests or property interests in the bidding process in Nebraska. Now many other states that have adopted this type of structure that Senator Slama is posing also has disgruntled bidder rights. What that means is you can still file a-- not just a protest within the agency, you can also have a court review that process to make sure that it's fair, impartial, just. That is lacking here. I'm not saying it's something we can't figure out and can't work on, but I have a bill in Government right now, my HUB bill, that is trying to promote competition by making sure they use small businesses and I feel this might be a step back from that. So I think we've got to be careful about the procurement process and let me give you a hypothetical. Underneath this bill, right now, we have current laws that say you have to build as a county, let's say, you have to-- or actually, any agency-- anything \$100,000 or above have to go out for a public bid. Well, if we enter into an agreement with say, Iowa, and their threshold is \$200,000 or \$1 million, then we've ran around our public bidding process by going to another state and allowing them to bid on it. That's 100 percent what would happen here. And that is a hypothetical and yes, it's an extreme hypothetical. But we don't have to go so far extreme to see that it could happen, that, that another state or another compact [SIC] can say we're gonna do X, Y, and Z for this price and actually do a different competitive bid process because all this bill does is define that as long as they do a competitive bid process-- doesn't have to match our state law, just as long as they do a competitive bid process, it'll be recognized. Well, that takes the entire authority away from this body and the entire authority away from the public bidding contracts and laws that we have to make sure that doesn't happen. Now again, the article that you're getting right now talks about repairing the contract-- repairing Nebraska's contract procurement system. And if you'll note, somewhere in here, it says Kevin Reddick v. City of Omaha and I was the attorney for that. And the reason we were able to survive motion for dismissal was because city of Omaha had an ordinance that, arguably, could give a disgruntled bidder, particularly a small and emerging business, the right to sue. Outside of that, case law is clear in Nebraska.

HUGHES: One minute.

WAYNE: If you have a problem with the process, all you can do is appeal to the agency and that's it. The agency has blanket authority, it's how you know. And you can no longer challenge that after that. That is a huge problem, not just within the state of Nebraska, but now

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

under the-- this law, it can go to any state. We can just sign an agreement and say whatever Iowa laws are or Kansas laws are or Nebraska-- or South Dakota's laws are, we can now just use their competitive bidding process by entering into an agreement. Again, that is slightly an extreme, but it's not so much when we look at what's going on with YRTCs, with DAS, with a RFI going out for a prison that I have yet to see any conversation in Appropriations about budgeting for that. So it's not that far of a stretch that they will use this law to get around our competitive bid process when they're currently, I think, ignoring the legislative process--

HUGHES: Time, Senator.

WAYNE: --as it is today. Thank you, Mr. President.

HUGHES: Thank you, Senator Wayne. Senator Kolterman, you're recognized and this is your third opportunity.

KOLTERMAN: Thank you, Mr. President, I appreciate that. As I said, I'm not against the idea of design build and I'm not really against the idea of allowing DAS to have more authority if there's a proper procedure in place to appeal that authority or appeal the decision that they make. At the present time, we don't have that. And that's what my bill, LB21, was designed to do, but I was ignored, completely ignored. It, it had one dissenting vote or one person in opposition at the hearing and that was DAS. And we had six or seven people that came in to support the bill and I couldn't get them to Exec on it and kick it out to the floor. So my frustration is this: we have-- there's, there's an organization called Information Technology Industry Council. They're the leading companies in the country. Their lobbyists testified in support of the bill, primarily because they want to have an appeals process if they're turned down. The companies that I'm talking about are companies like Accenture, Amazon, eBay, Iron Mountain, Intuit, Logitech, Qualcomm, SAP, Schneider Electric, Toyota, Wish, Samsung. These companies aren't gonna continue to bid on our, on our contracts in the state of Nebraska if they don't have some protections knowing that they're getting a fair shake. That's simply what I'm trying to do. I was wondering if Senator Slama would be open to a, a question?

HUGHES: Senator Slama, will you yield?

SLAMA: Absolutely.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

KOLTERMAN: Thank you, Senator Slama. As I told you earlier, I'm not necessarily against your bill. I think that the proper procedures need to be in place before we give them more authority. That's really where I'm at. Would you be open to looking at something to possibly amend your bill to take into account something like my bill that would allow for that transparency, allow for that appeals process?

SLAMA: It would be a discussion I'm open to having between General and Select.

KOLTERMAN: OK, I think it needs to be more than that, but I just think that we're getting the cart before the horse. We're talking about multimillion dollar contracts. We're in lawsuits right now on two state contracts that were awarded and there was not proper procedures in place to appeal them. And so the only recourse that they had-- as an example, Heritage Health, was to bring a lawsuit. Several years ago, we had the same situation happen with the state's health insurance program. They award it to someone else. It had been with Blue Cross Blue Shield for years. It was awarded to someone else and there was not a good appeals process. That's the kind of thing we're talking about here. My bill said that any contract over \$5 million would be subject to an appeals process, judicial review. That took it out of the hands of the DAS and allowed the courts to make a decision whether or not there-- it was like a third-party making a decision, whether or not there was a fair shake. That's all we're asking for. I patterned my bill after Iowa's legislation. I think it, at least, deserves some more consideration. Thank you.

HUGHES: Thank you, Senators Kolterman and Slama. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. So I have been handed an audit by State Auditor Charlie Janssen that was dated December 19, 2019, so in the past three months. And it says in connection with our audit described above, we noted certain internal control or compliance matters related to the activities of the Nebraska Department of Administrative Services or other optional-- operational matters that are presented below for your consideration. These comments and recommendations, which have been discussed with appropriate members of DAS management, are intended to improve internal control or result in other operating efficiencies. It's a 25-page treatise and it says on page 8, without adequate procedures and staffing to ensure the accuracy of financial reports and information used to repair to the CAFR, there is an increased risk that the material misstatements may

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

occur and remain undetected. We recommend DAS dedicate or hire a sufficient number of staff to ensure internally-prepared information is complete, accurate, and submitted timely to the auditors. We also recommend DAS utilize resources to work with state agency personnel to ensure accrual information is supported and has a sound accounting base. So there are-- I agree with what Senator Kolterman is saying and I'm, I'm very concerned that you're open to just talking about it rather than being willing to include some of the language that Senator Kolterman is, is talking about; to limit the extent of the powers of DAS and not having some sort of ability to oversee and provide good oversight by our Legislature to this organization. So with that, I'll give the rest of my time to Senator Kolterman.

HUGHES: Senator Kolterman, you're yielded 2:45.

KOLTERMAN: Thank you. I'm just gonna-- thank you, Senator Pansing Brooks. Thank you, Mr. President. I'm just gonna ask a few questions for you to think about and contemplate on. These are things that had come up in some of my conversation as I was working on my bill and it really does affect what we're talking about here. What happens if DAS-- if the DAS process negotiate the terms of the contract and the contract ends in failure, such as we had with Wipro Contractor Oracle Fusion program that had been in the news the last few years? Would the state be responsible for reimbursing those subdivisions or other states on the funds already spent on the project since DAS was ultimately in charge of the procuring the contract? Again, we're taking on some liabilities here for other states or other subdivisions if we decide to enter into these types of contracts. Another question: Could other states sue Nebraska for improperly conducting the procurement or negotiating the collaborative contract? Should Nebraska take that liability risk on? I think maybe Pansing Brooks already said something about does DAS have the qualifications, legal staff, and budget to be undertaking bidding and contracting duties for other states? Just food for thought. There have been 29 protests filed between 2014 and 2018. I already alluded to a few of these, 14 of which have been for contracts in excess of \$5 million. If there is a full-fledged lawsuit filed in protest of the contract, such as in 2016 with Heritage Health or in 2019 with the St. Francis contract--

HUGHES: One minute.

KOLTERMAN: --would the bidder protesting the contracts have to file a lawsuit in Nebraska court or could a lawsuit be filed in any state in the procurement agreement, even if DAS led the negotiations? And by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

the same token, if another state procured the cooperative contract on behalf of the multiple states, would DAS in Nebraska be dragged into the courts in other states which conducted that procurement? Would Nebraska's contract be bogged down in litigation in another state and be forced to spend money and time on the foreign state protest process? I'm sure there's answers to all these questions that have transpired. I'm sure that Senator Slama looked at these other 37 states that have done that and I'm sure there's a way to answer these questions, but I just don't-- I know we don't have the process in place if it happens to us and that's my main concern. We need an appeals process if we're gonna give this kind of authority to DAS. Thank you.

HUGHES: Thank you, Senators Kolterman and Pansing Brooks. Senator Slama, you are recognized.

SLAMA: Thank you, Mr. President. I was wondering if Senator Kolterman would yield to a quick question?

HUGHES: Senator Kolterman, will you yield?

KOLTERMAN: Of course I would.

SLAMA: Senator Kolterman, do you intend to take this bill three hours?

KOLTERMAN: Not if we can negotiate it.

SLAMA: OK, thank you. Would Senator Pansing Brooks yield to a question?

HUGHES: Senator Pansing Brooks, will you yield?

PANSING BROOKS: Sure.

SLAMA: Senator Pansing Brooks, do you intend to take this bill three hours?

PANSING BROOKS: I don't know. If we get good answers, then no.

SLAMA: OK.

PANSING BROOKS: Thank you.

SLAMA: Thank you. I'd just like to get on the mike and clarify a few things that have been said. It's pretty clear to me that there are some outside forces in on this bill. On one hand, it seems like we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

have some larger complaints with the DAS. Again, LB790 saves our taxpayers money. It's a very small bill. It makes a few technical changes. If you're interested in reforming DAS, I'd encourage you to introduce legislation to that end and prioritize it. Everybody in this body is free to do that and it's definitely something that's open for discussion and debate. I have a parallel to this. I know we have a lot of issues with-- sometimes with the Department of Health and Human Services, but yet we still pass bills that save our taxpayers money, that reform DAS-- DHHS, that enable it to better serve its customers and the people of Nebraska. So I'm, I'm hesitant to any blowback, any larger discussion about doing a full overhaul of DAS on a bill that is merely a technical bill that enables us to join 38 other states and save taxpayer money as a lead state and to enter into contracts with political subdivisions of other states. And it seems like the second larger force out here is some form of retribution for taking time on bills on the floor. Hey, you're operating within the rules. I operate within the rules. We're free to do whatever we would like on this floor within the rules, so more power to you if that's your angle. But just know that in doing so, you're filibustering a bill or having extended debate-- that remains to be seen if it is a full filibuster-- a bill that would save us upwards of a half-million dollars a year. So just keep that in mind as discussion continues. I'm absolutely amenable to potential amendments between General and Select, but I would encourage everybody to just keep a focus on this bill, what it does. It is a very simple bill. Let's not try to reinvent the wheel here. Thank you.

HUGHES: Thank you, Senator Slama. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. I am still completely undecided on LB790 but when my colleague, Senator Kolterman, has issues with the bill, I definitely take note at that. And so I want to yield my time to hear more from him. Thank you.

HUGHES: Senator Kolterman, 4:40.

KOLTERMAN: Thank you very much, Senator Wishart, I appreciate that. Just for the record, I didn't intend to filibuster this bill, but I do intend to continue to talk this morning until I can get some assurances that DAS is willing to sit down and talk with us or talk with me and the people that brought my bill about correcting their process before we give them more authority. That's basically what it's about. I'm not here to, to reconstruct what DAS does. It's, it's not a big grandiose picture of what I'm trying to do to DAS. I'm just simply

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

trying to say that if we expect companies to continue to want to do business with the state of Nebraska-- and I'm talking about large contracts-- then we ought to have a process in place so that if you spend millions of dollars bidding on a project that could end up being a billion-dollar project, we have the right to appeal. At this time, there's no right to appeal other than through the courts. I just don't think that that's prudent for us, as a state, when other states have put in appeal processes over the years. We have not done so. The bill that I brought last year, LB21, could very much be attached to this bill and make it an even better bill. I want to make it perfectly clear: I'm not against LB790 and AM2436 unless we can get a process in place so that if they do award these contracts, there are appeals process that everybody can take advantage of that doesn't get the bids. We're talking about millions and millions and millions of dollars. We've seen DHHS have bills that-- they have spent millions of dollars on things and then all of a sudden, they back out of a contract. That's what we're trying to avoid here. And we walk away from \$72 million here or \$32 million there. That's happened a lot over the last five years since I've been here. I think that process needs to change. So am I trying to kill this bill? No, I'm not trying to kill this bill. What I am trying to do is make this bill even better and incorporated into it the advantage of having an appeals process if you don't get the job. Thank you.

HUGHES: Thank you, Senators Kolterman and Wishart. Senator Cavanaugh, you're recognized.

CAVANAUGH: Sorry, I've just been listening to the debate and I knew that Senator Kolterman was out of his turns to speak. So I don't know if he would like more time, if you would? No? He doesn't, OK. Well, then I yield my time back to the Chair. Thank you.

HUGHES: Thank you, Senator Cavanaugh. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. A few more items I'd like to cover before we, we finish debate this, this morning. And I think, I think this extended debate that we've had has been productive. And I'm-- I thank those people participating. One of the things I talked to Senator Hilgers off the mike about was due process. And he guaranteed to me, and I believe it's true, that we have sufficient due process procedures in Nebraska that enables a bidder that feels he or she or the company they represent has been wronged. They can, they can go to the courts or at least go to the, the department and get

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate February 20, 2020

satisfaction that way. I would also offer that-- to mention that the state already has authority to enter into multistate contracts. That was the case when I was doing bidding, you know, 25, 30 years ago with the state of Nebraska. You know, I pretty much bid with five states in the Midwest. Nebraska was one of those states and included Iowa, South Dakota, Kansas, and, and the state of Iowa, as I mentioned. So there was five states that we dealt with and Nebraska was one of those states. And I found Nebraska to be one of the better states to bid in. They were the most responsible. The specifications were clear and, and not too narrow, which would favor a particular company. So Nebraska is well done, but as I mentioned, I am glad that we had this extended debate about this-- these two, the amendment and the bill, LB790. And with that, Mr. President, I yield the balance of my time.

HUGHES: Thank you, Senator McCollister. Mr. Clerk, for items.

ASSISTANT CLERK: Thank you, Mr. President. Series of priority bill designations: the Appropriations Committee, LB1198 and LB780. Amendments to be printed: Senator Lindstrom to LB1014; Senator Matt Hansen to LB962; Senator Erdman, a motion to LB720. Name adds: Senator Blood to LB997; Senator Groene to LB997; Senator Hilgers to LB997; Senator Matt Hansen to LB1015. Finally, a priority motion. Senator Gragert would move to adjourn until Friday, February 21, 2020 at 9:00 a.m.

HUGHES: Thank you, Mr. Clerk. Colleagues, you've all heard the motion. All those in favor say aye. All opposed say nay. We are adjourned.