

**HILGERS:** Good morning, ladies and gentle-- gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-sixth day of the One Hundred Seventh Legislature, First Session. Our chaplain for today is Senator Clements. Please rise.

**CLEMENTS:** Thank you, Mr. President. I have found the first prayer of the Continental Congress, 1774, by Reverend Jacob Duche, a rector of the Christ Church of Philadelphia, Pennsylvania. This prayer was given at 9:00 in the morning, September 7, 1774, 246 years ago. And I thought it would be appropriate for us to hear how they started our first Continental Congress. Please join me in prayer. Oh Lord, our Heavenly Father, high and mighty king of kings and lord of lords, you behold all the dwellers on Earth and reign with power supreme over all the nations. We ask you to look down with mercy on these, our American states, who have fled to you from the rod of the oppressor and thrown themselves on your gracious protection, desiring to be dependent only on you. To you have they appealed for the righteousness of their cause. To you do they now look up for that countenance and support which you alone can give. Take them, therefore, Heavenly Father, under your nurturing care, give them wisdom and counsel and valor in the field. Defeat the malicious designs of our cruel adversaries. Be present, oh God of wisdom, and direct the counsels of this honorable assembly. Enable them to settle things on the best and surest foundation, that order, harmony and peace may be effectively restored and truth and justice, religion and piety prevail and flourish among the people. Preserve the health of their bodies and sharpness of their minds. Shower down on them and the millions they represent blessings as you see best for them in this world, and crown them with everlasting glory in the world to come. All this we ask in the name of Jesus Christ, your son and our savior. Amen.

**HILGERS:** Thank you, Senator Clements. Senator Hughes, you are recognized for the Pledge of Allegiance.

**HUGHES:** Good morning, colleagues. Would you please join me in the pledge? I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

**HILGERS:** Thank you, Senator Hughes. I call to order the fifty-sixth day of the One Hundred Seventh Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**ASSISTANT CLERK:** There is a quorum present, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HILGERS:** Thank you, Mr. Clerk. Are there any corrections for the Journal?

**ASSISTANT CLERK:** Mr. President, one correction on page 869, line 22, insert the word "Second" after the word Reading. That's all I have.

**HILGERS:** Do you have any messages, reports, or announcements?

**ASSISTANT CLERK:** No messages, reports or announcements this morning.

**HILGERS:** Thank you, Mr. Clerk. We'll turn to the first item on our agenda, General File appropriations bills.

**ASSISTANT CLERK:** Mr. President, LB423A, introduced by Senator Lathrop. It's a bill for an act relating to appropriations to appropriate funds to carry out the provisions of LB423. The bill was introduced on March 29. It is pending now on General File.

**HILGERS:** Thank you, Mr. Clerk. Senator Lathrop, you are recognized to open on LB423A.

**LATHROP:** Thank you, Mr. President. Colleagues, good morning. LB423A very simply provides the startup money for the home inspector registry program that we passed yesterday. This is a one-time expenditure. The money will go to the Secretary of State. The startup cost is \$30,000. After the startup costs, it will be self-sustaining with the annual fees charged to those who are required to be on the registry. And with that, I would appreciate your support of LB423A. Thank you.

**HILGERS:** Thank you, Senator Lathrop. Debate is now open on LB423A. Seeing no one in the queue, Senator Lathrop, you are recognized to close. Senator Lathrop waives closing. The question before the body is the advancement of LB423A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have all those voted who wish to? Please record, Mr. Clerk.

**ASSISTANT CLERK:** 32 ayes, 0 nays on the motion to advance the bill.

**HILGERS:** LB423A is advanced. Turning to General File, 2021, committee priority bill. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB17, introduced by Senator Kolterman. It's a bill for an act relating to retirement; to change actuarial valuation provisions and amortization periods in retirement system under the Judges Retirement Act, the School Employees Retirement Act, the Nebraska State Patrol Retirement Act; to eliminate obsolete

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

provisions; harmonize provisions; repeal the original sections; declare an emergency. The bill was introduced on January 7, referred to the Retirement Systems Committee. That committee placed the bill on General File with committee amendments.

**HILGERS:** Thank you, Mr. Clerk. Senator Kolterman, you are recognized to open on LB17.

**KOLTERMAN:** Thank you, Mr. President. Good morning, colleagues. LB17, as introduced, changes the amortization period in the Judges, School and State Patrol defined benefit plans administered by the Nebraska Public Employees Retirement System. Under this bill, the current 30-year amortization period for these retirement systems remains in effect until July 1 of 2021, and changes to a 25-year period on new-- on new basis beginning July 1, 2021. The actuary advised the Public Employees Retirement Board, known as the PERB, that current actuarial standards recommend using layered basis amortized over shorter periods between 15 to 25 years. Under the new actuarial standard, a 30-year period will not likely be considered reasonable, and therefore the shorter amortization period should be adopted as soon as possible. Since the amortization time periods are set in statute, the legislation is required to make these changes. LB17 also inserts new language in the Judges, State Patrol and School Employees Retirement Act, which with-- which authorizes the actuary to combine the offset-- to combine or offset certain amortization bases to reduce future volatility of the actuarial contribution rate after the PERB notifies the Retirement Committee of the actuary's recommendations. The required notification must include the actuary's explanation of why the combination of offset is in the best interest of the plan at the proposed time and also include a projection of the contribution to fund the plan if the recommended changes are implemented and if the changes are not implemented. Committee AM461 becomes the bill, which I'm going to talk about now, if that's all right, Mr. Speaker.

**HILGERS:** Yes, Senator Kolterman. The committee-- I'm sorry, the Clerk did note that there are committee amendments and you are welcome to open on AM461.

**KOLTERMAN:** AM461-- excuse me, the committee amendment becomes the bill. It incorporates two additional bills to improve the funding of the Judges Retirement Plan, LB24 and LB16. But before I get into the description of the other bills, I want to give you a background about the funding of the Judges Retirement Plans. When the Judges Retirement System was established in statute in 1955, the funding was structured unlike other Nebraska retirement systems. The judges make

contributions like members of the retirements, other retirement systems. However, unlike other retirement plans, there's no employer contribution in the judges plan. Instead, the Judges Retirement System has been historically funded in most part by various court fees earmarked specifically for the Judges Retirement Fund. The state is then liable for any unfunded liability payments known as ARCs, actuarially required contributions. However, for over a decade, court fee revenue has continued to decline overall due to a number of factors, including such things as waiver of fees and the increased availability of use of pretrial diversion programs for some traffic violations. For a number of years, I have worked closely with Chief Justice Heavican, the Court Administrator's Office, and representative of the judges to examine alternate-- alternative funding sources. Three years ago, the Chief Justice invited me to speak to the judges at the annual State Bar Association meeting, which I did. I received feedback from the judges at that time, which has remained unchanged, that despite challenges with decreased court fee revenue, they still support court fees as a funding source for the judges retirement. In 2020, several events occurred which triggered concerns about the need to identify and enact a more structured and reliable funding mechanism to address funding needs for the Judges Retirement System. Since the pandemic hit last March, there has been a drop of \$800,000 in court revenue from the Judges Retirement System compared to the previous year. This is 22 percent decrease in court fees revenue for the judges retirement. In addition, last year new actuarial assumptions were adopted in the 2020 Actuarial Experience Study that resulted in an increase in the amount of needed funding for the judges plan. A key assumption change lowered the assumed interest rate from 7.5 to 7 percent. A reduction in the assumed return rate is, is an increase in the amount which must be contributed to meet the current funding requirements and to maintain the long-term sustainability of the retirement system. As a result of the intervening factors last year, the amount of the ARC which was paid out of General Funds increased from a proposed \$350,000 to \$1.4 million. Future ARCs over the next five years are expected to increase over \$2 million a year. So, so this summer I reached out again to Chief Heavican with my colleague and, and the judges' representatives and we met several times this past interim to discuss new proposals to increase various court fees dedicated to judges retirement. As a, as a result of these discussions, I introduced two bills, LB24 and 6-- LB16. The provisions of LB24, which we have incorporated into committee AM461, increase several court fees and increase the earmarked amount in the, in other court fees for the Judges Retirement Fund. The proposed court fees changes will begin July 1 of 2021. Several of these fees will continue

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

to increase annually through July 1 of 2025. The estimated revenue from these court fees is estimated to initially generate \$1.2 million in additional court revenue for the judges retirement and increase to approximately \$2.1 million incrementally during the next five fiscal years. The bill also includes several minor cleanup provisions clarifying that the court fee revenue for reported monthly rather than quarterly to the State Treasurer. It further clarifies that the State Court Administrator's Office remits information about collection of such fees to the director of the Nebraska Public Employees Retirement System. LB16-- the committee amended LB16 and it also incorporated into four-- AM461. It creates a state contribution to the judges' plan, similar to the 2 percent state contribution that has been a successful funding mechanism for the school plan. This state contribution to the school plan has eliminated, has eliminated the need for the ARC for the plan for the next seven years. As originally introduced, the state contribution would have been 4 percent this year and increased to 6 percent in 2023. Under the language as amended by the committee beginning July 1 of 2023, the state will contribute 5 percent of the total compensation to all members of the Judges Retirement System as reported in the most recent actuarial valuation report. The percentage amount is based on the actuary's analysis of what is needed to stay in the judges plan. In response to a request from the Governor, trigger mechanisms have been incorporated into the, into the plan so that it doesn't get overfunded. So we're working on an amendment with the Governor at the present time because he didn't particularly like the way the language stated in the plan, but he is on board with this proposal and we're working with him right now. Chief Justice Heavican and I met with him yesterday with our legal counsels and we're working out an amendment. I will tell you this, that if the plan gets to 100 percent for more than two consecutive years, we want the flexibility to be able to adjust the plan down to even zero if it's necessary. But at the same time, it has to come back to the Legislature to have that happen. So that will be an amendment that we'd like to bring forth during the period of Select File if this, if this advances. So the other thing that you have in front of you from Cavanaugh Macdonald is an actuarial cost study. In compliance with the legislative rule 5, subsection (15), an actual-- actuarial cost study was completed, which I have shared with you. It discusses the funding impact of the proposed changes in the Judges Retirement System as a result of the provisions in this bill. The chart also shows the funding impacts on the judges plan as it appears on page 6-- or 7 and 8, the horizontally oriented pages. So as you can see, when you compare the baseline total state numbers, which is based on current law, to the state contribution if LB17 is passed, over the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

next 10 years, the state will contribute almost \$8 million less. The charge-- charts on pages 9 reflect, and 11, reflect the funding impacts of the State Patrol and the school plans, just changing the amortization period from 30 to 25 years in each of those plans. I would ask for your support of LB-- or AM461, which becomes the bill. And since this bill has the E clause, I'm hoping we can get the 30 votes by Final Reading. With that, I would try to answer any questions you might have about this bill. Thank you, Mr. Chairman.

**HILGERS:** Thank you, Senator Kolterman. Mr. Clerk for an amendment.

**ASSISTANT CLERK:** Mr. President, Senator John Cavanaugh would move to amend with AM884.

**HILGERS:** Senator John Cavanaugh, you are recognized to open on AM884.

**J. CAVANAUGH:** Thank you, Mr. Speaker. And I apologize to Senator Kolterman for not giving him a heads up that I brought this amendment. I just sort of got it drafted and handed in right as I walked in the door this morning. But basically, what AM884 would do would be strike the portions going forward for the increase in the Judges Retirement Fund for the future fiscal years and just leave in the current fiscal year increase. So I have a problem with funding the, the judges retirement through court fees. Obviously, I, I have tremendous respect for the work the judges do. And I have respect for the work Senator Kolterman is trying to do to make sure that this fund is adequately taken care of. I do think it's a responsibility we have to adequately fund retirement pension funds and follow through on the commitments that we've made to people. However, in our court systems, there are just a deluge of fees and costs associated with going to court and access to the courts. And the criminal justice system in particular becomes a very expensive cycle that keeps people in the criminal justice system. So I've got, I guess, a lot of concerns about the way we structure this. But this is one particular one where we are making a allocation, changing the fees going forward by, at the end of this, is going to double the total amount that we are putting into the judges retirement fee through these courts. And so the problem is, and Senator Kolterman kind of, I think, hit this on the head when he was addressing the fact that we've seen a decrease in fees as a result of diversion programs, as a result of waiver of fees. One of the problems we have is when you put a financial interest in the hands of a person who's making the decision about whether to waive those fees. Right now, the judges retirement is funded at \$6 out of the fees which are waivable. And those of you who know, know that I practiced in the indigent criminal defense for seven years prior to coming here. And I

would tell you in the time of working there, I think I got fees waived maybe twice. And I represented people who were found by the court to be unable to afford paying for a lawyer, unable to pay for programming. Those were people who then were still found to have to pay all of these court fees. Now, I don't think that the judges were factoring in their retirement into that consideration, but I've certainly had that conversation after the fact with people who are going to have to pay those fees. They had to go and figure out how they're going to pay it. They had to get time to pay. And they look at the itemized list of where all that money is going to, and you can be sure that when people look at their court costs and they see that one of them is going to pay the judge, those people are inherently suspicious of the, the equity of that system, the fairness and the consideration that they were afforded when they were asking and making their case. And if we have a system that is undermined in that way and we continue to undermine it, the confidence of the people who are participating in it, that is a problem. I think that there are a number of reasons we shouldn't do this, but not the least of which is the confidence in the system that people need to have if they are going to accept the results and the outcomes. So I think we should at least, if we're going to increase this fee, I'm not in favor of increasing the fees at all. I'm not in favor of increasing any court fees. I don't think that we should fund essential government services, things that we are supposed to be doing through this sort of fee-based system. I think that that's the wrong way to do it. I think we just, we just had a very good briefing from Senator Stinner about how much money we have available and what we're going to do with it. I think a much better use of that money and better ways to fill these holes in our funding would be to allocate some of this money to pay for the retirement fund and for the other court fees that we've, that we've added over the years. We have the indigent defense fund, which, of course, the number of people that I represented, of course, are indigent. Then they're forced to pay an indigent defense fund, which then goes to help represent indigent people, which is kind of a circular problem. But we have, I think there's the arbitration fund, which, of course, is a program that I would think, I think has value. And I think that it's one of those programs that, if successful, actually decreases the number of cases that are going into the courts, which then, of course, decreases the fees that we are getting access to to pay for these things. And so I think it's important that we take a second look at how we do this. And these are important things to be funding, but this is not the right way to do it because the people who we are leveraging this on are the people who are least able to, to pay this cost. And in the criminal court context, they are people who did

not file the case. They're not, they didn't bring the case themselves. And I know a lot of people will probably say things like, then don't commit the crime if you can't pay the penalty. But again, I can tell you from personal experience, there are a lot of people who are in the criminal justice system who are overcharged, who are-- some of them are, in fact, innocent, which is, of course, the nature of our system, which is innocent until proven guilty. And when you put fees on top of fines on top of incarceration, you create a system that is designed, maybe not intentionally, but does have the-- accomplishes the objective of forcing people to plead. And even if you force a plea for a fine of a dollar, you still have these fees that are essentially unwaiverable. The statute allows for discretionary waiverability. It does not happen. And so when we talk about these fees, we're not talking about, well, people who can't afford to pay it will not have to pay it. I can tell you those people are going to pay those fees. And if they can't pay it, what they will do is they will sit it out in jail, which means we are incarcerating people based off of their inability to pay, which is another fundamental problem in our criminal justice system. We are-- or they will do the offender work program, which actually was much more broadly implemented during the COVID pandemic, which is, was a great system. But it took a while to get, get up to that. But if you were late or you miss it, they will issue a warrant. Then people will get arrested. They will be incarcerated again for their inability to pay. And so I think that it's an important conversation to have about how we fund these essential things, including retirement that we are supposed to as a state fund. But I think that we need to shift away from this, putting it on the back of the people who are accessing the courts, who are seeking their redress through the court system, or even people who are charged with crimes who are indigent and can't afford to pay it. So I'd ask for your green vote on AM884. And, Mr. Chair, how much time do I have left?

**HUGHES:** 2:30.

**J. CAVANAUGH:** Two-thirty-- oh, I had ten minutes. See, I forget that I have ten minutes on these ones. So I can talk some more. So my, just my general problem with court fees, as I said, is in my practice, in my experience, I have represented a number of people who have gone to court, they've gotten a small fine. They've gotten these court fees, which in many cases double the total cost of the penalty, a \$50 fine and \$50 worth of court fees. And then those people get time to pay and they can't pay it. And they either come back to court to get time to pay again or they, they sit it out or they do the offender work program. But there are also instances where there are people who are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

unable to pay. They'll issue a warrant. Those people will either get incarcerated as a result of failure to pay that warrant, which again means people are being incarcerated because of their, their inability to pay costs and fees. We are incarcerating people because of their poverty. But there are also instances where they will suspend people's driver's licenses, which then creates another cycle in the criminal justice system where people are unable to get a valid driver's license, which means that, I don't know about where everybody comes from, but in Omaha, if you don't have a driver's license, you can't get anywhere. You can't get to a job, you can't get to school, you can't get to your, your healthcare. You can't do anything. You need a driver's license, and so people choose to drive--

**HUGHES:** One minute.

**J. CAVANAUGH:** I'm sorry?

**HUGHES:** One minute.

**J. CAVANAUGH:** One minute, thank you. So people choose to drive and then, of course, they come into contact with law enforcement. They get arrested, they get cited for that driving under suspension, which their license is suspended for failure to pay a court cost court fee. And so we create a cycle where now they're back in court paying more court costs and more court fees because they couldn't pay the original court costs, and they are subject to incarceration going forward. I actually brought a bill this year that went to the Transportation Committee that would help address some of that, that would reduce those suspended licenses and hopefully reduce that cycle. But really, the cycle begins with inability to pay some of these what most people would consider small, insignificant amounts of money. But the people in the criminal justice system, this is a significant amount of money to them. When, when this is said and done, this bill will raise the fees from \$6 to \$12, which is a doubling of a fee that is already cumbersome on people. So we should fund, fully fund judges' retire--

**HUGHES:** Time, Senator.

**J. CAVANAUGH:** Thank you.

**HUGHES:** Thank you, Senator Cavanaugh. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. President. Good morning. I was wondering if Senator Cavanaugh, John Cavanaugh would yield to a question or two.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Senator John Cavanaugh, will you yield?

**J. CAVANAUGH:** Yes, I'm sorry. I'm sorry. Yes, I'll take question.

**ERDMAN:** Thank you. Senator, so what your amendment is trying to do, I read the amendment, and you're-- so you're striking all of the increases from \$8, \$9 and \$10, is that correct, leaving it at \$6?

**J. CAVANAUGH:** It would strike beyond the \$8, so--

**ERDMAN:** Beyond \$8?

**J. CAVANAUGH:** --it will leave the first-- it will leave the first increase, but strike the further increase.

**ERDMAN:** So the \$8 and the \$9 would be acceptable, then the \$10 would be stricken?

**J. CAVANAUGH:** Well, to be clear, I don't think we should increase it at all. But this-- I-- I do think when we're having conversation, we should limit it to a one-time increase and not increasing it in a stepped approach going forward.

**ERDMAN:** Oh, OK. So-- so this has an increase for-- for three years. It goes from \$8 to \$9 and from \$9 to \$10. Right? And so you're asking it for the two-year increase in the third year, the \$10 one, you're asking to strike that?

**J. CAVANAUGH:** That's correct.

**ERDMAN:** OK, thank you. I appreciate that. All right. Thank you. I was wondering if Senator Kolterman would yield to a question or two.

**HUGHES:** Senator Kolterman, will you yield?

**KOLTERMAN:** Absolutely, yes.

**ERDMAN:** Senator Kolterman, thank you. Can you tell me, of the increased revenue, how much is the court fees and how much is the 5 percent from the state contribution? You can just give me a percentage or-- or the dollar amount, if you know.

**KOLTERMAN:** Well, the projected rate, the fee-- year-- year-one fee increase would project an additional \$1.2 million.

**ERDMAN:** OK, that's the fee increase. OK. And what's the 5 percent?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**KOLTERMAN:** I'll have to look-- I-- give me a few minutes or give me a--

**ERDMAN:** OK.

**KOLTERMAN:** --little bit of time on that.

**ERDMAN:** While he's looking to find that, I would-- I would say this, that as-- as we change the actuarial numbers for the amortization from 30 to 25, Senator Kolterman also--

**KOLTERMAN:** I--

**ERDMAN:** --had stated in his comments that it would save us \$8 million or reduce the spending by \$8 million. But did you get the answer, Senator Kolterman?

**KOLTERMAN:** Yes, I do. If you look at the Cav-- Cavanaugh Macdonald report that you have in front of you there, Exhibit A-1, the state contribution is 16.36 percent.

**ERDMAN:** OK.

**KOLTERMAN:** And that's-- that would be our contribution of-- of salary.

**ERDMAN:** All right. I see. OK. All right, thank you. So help me, if you would, understand-- help me understand that we would reduce spending or we would save \$8-- \$8 million. Can you go through that explanation for me?

**KOLTERMAN:** Well, yeah, as-- what happens is-- well, as you know, in the state teacher retirement, just to give you an example of how that works, we put 2 percent a year in for all-- anybody that's in the state education retirement plan.

**ERDMAN:** Right.

**KOLTERMAN:** And-- and since we've been doing that for about 11 or 12 years now, at one point in time, it was 1 percent.

**HUGHES:** One minute.

**KOLTERMAN:** That's allowed us not to have any ARCs, annual required contributions--

**ERDMAN:** OK.

**KOLTERMAN:** --or actuarially required contributions. And it's-- and it's allowed our-- it's given us the ability to utilize the-- the fee-- the money that's coming in from that to level off these plans and make sure that they're funded adequately.

**ERDMAN:** OK.

**KOLTERMAN:** And-- and what happens, even with the fee in-- is we-- since we haven't had a fee increase since 2005 in the courts, we-- we decided we'd increase a little bit there and then we'd put that 5 percent of salary on top of it. What-- what-- what happened-- and I'll talk some more about this because I'm next in the queue and I'll try to answer any questions you might have, Senator Erdman.

**ERDMAN:** OK.

**KOLTERMAN:** What-- what happens is, as the fee increase goes up over that five years, the state's contribution won't be as needed and we'll save money in the state contribution. And-- and then after 5-- or-- and then after-- if once we get--

**HUGHES:** Time, Senators.

**KOLTERMAN:** --100 percent funded--

**HUGHES:** Thank you, Senators Erdman, John Cavanaugh, and Senator Kolterman. Senator Kolterman, you're now recognized.

**KOLTERMAN:** Thank you. Senator Erdman, I'll-- I'll try to continue to answer your question there. Once we get-- excuse me. Once we get 100 percent funded, at that point in time, there-- there will be an amendment, that the Governor and I are working on at the present time, that will adjust the fees potentially down to even zero. But it-- in no case would it ever be 5-- more than 5 percent that we're contributing from a-- from a state perspective. The other thing that I think is-- is important to understand is, at the present time, if you-- if you look at what we're doing as a state for all the other retirement plans, because the 5 percent sounds like a lot of money, but the reality is the judge is paying about-- they average about 8.5 percent of their contribution and we put no employer contribution in on that. At the same time, the school plan puts in 9.78 percent, and we match that with 101 percent to 9.88. The Patrol plan, we-- they put in 16 or 17 percent and we match that with 16 or 17 percent. And then the state and the county, in the state plan, they put in 4.8 percent and we match that with 156 percent to 7.48. And then in the county plans, the employer-- the employee puts in 4.5 percent and we match

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

that 100 percent. So all we're trying to do is use the 5 percent of the state contribution to-- to help us plan for the future and help offset since these court fees continue to drop. And if I sh-- I could-- I've got a chart here if you'd like to come over in a minute and look at it, but it shows you that the court fees have gone down anywhere from 136 percent in-- in 1998 down to minimal amounts today and-- and they just keep declining. I will say that the Governor was very generous this year because he put in money to offset the increase that we lost in the General Fund, and he did that before we knew this bill was even coming. So anyway, the other thing I would say, I-- I-- I don't support the amendment, AM884 that's up there from Senator Cavanaugh. I-- I understand his concern. I don't like court fee increases any more than anybody else. I think it's not a good way to fund our retirement plan system, but it's all we've got and it's-- and it's been set up that way since 1955. I have no control over that. As I indicated, I've met with the judges on several occasions. I met with the Supreme Court justice who's in charge of main-- you know, wanting to make sure this plan is funded adequately. And until we make that change, I think this-- that amendment, that's a poison pill. The other thing I would say is the amendment, if-- if we-- if we don't carry it out at least two years, we won't have an opportunity to come back unless we suspend the rules next year and-- and come in with a different type of a plan. I will tell you that it's going to take a lot of negotiation because I've been negotiating with the-- the judges now for over four years. And it's going to take a tremendous amount of work and a tremendous amount of negotiation to get this plan completely changed so we're funding it out of General Funds. The perfect scenario to me would be we'd fund it out of General Funds and all the court fees would go into the General Fund. But that's not what-- the way it works. And it takes a long time to establish plans like this. And I would hope that you would vote down AM884 and advance AM461 and LB17 and--

**HUGHES:** One minute.

**KOLTERMAN:** And with that, I will yield the rest of my time to the Chair.

**HUGHES:** Thank you, Senator Kolterman. Senator Lathrop, you're recognized.

**LATHROP:** Thank you, Mr. President. Thank you, Mr. President. And, colleagues, good morning once again. I am in opposition or stand in opposition to the Cavanaugh amendment. I support the Retirement amendment and the Kolterman bill. I do want to appreciate what Senator

Cavanaugh's sharing with us this morning. For those of you who are not involved in the court system, the concern Senator Cavanaugh has expressed, and I fully understand it, is that in the court system, in order to file a lawsuit, so if you are filing a divorce or filing an auto case or a big multinational corporate fight that happens sometimes or the smallest of cases, you have to file or pay a filing fee when you file your complaint to start the process. In the criminal realm, you can be charged court costs, in addition to a fine or a penalty, at the conclusion of your case if you're found guilty. That's the concern Senator Cavanaugh's expressed today. If you're acquitted, you don't have to pay the court costs. That's-- only the loser has to pay that. And in a civil case, if you go to trial and you lose, you pay the court costs; you reimburse the plaintiff for the cost of filing and any subpoena expenses that may have been incurred by the other side in the course of the litigation. So these filing fees end up being paid by someone who is typically either found guilty or the loser in a civil case. That's why you hear Senator Cavanaugh, and it's a thoughtful consideration. The difficulty for us is the process that we have for taking care of the judges' retirement is tied to filing fees. It's tied to filing fees historically. And could we come in and unravel all that and make it a General Fund appropriation from year to year? The challenge for that is that we would put a separate branch of government in the place of coming in front of the Appropriations Committee, asking for money, and competing with all of the agencies for an appropriation. The difficulty that the retirement folks find themselves in is trying to figure out what to do in a time when our court filings are actually down, so the number of suits or the number of criminal proceedings that generally fund this court fee pool that's used for retirement is down. It's a problem for the-- the Commission on Public Advocacy. It's a problem for the court and some of their cash funds. We're not bringing those bills or those bills as amendments to the Kolterman bill, but it's a problem; for all of those different pieces of the filing fee that get distributed, each one of those cash accounts have had challenges because of the number of filings being down. Those of you that think we litigate too much, you probably appreciate that the filings are down; and if we have fewer criminal cases, we're all happy about that. But it does affect the revenue stream that the retirement folks have to deal with in terms of taking care of our judges' retirement. I will say that even with these fee increases, even with these fee increases, our filing fees are lower compared to our neighboring states. Certainly, when I file a lawsuit in federal court, I pay considerably more than filing a lawsuit in the district court, even with these fee increases. It really doesn't affect my decision where I'm going to file a lawsuit,

whether it's in federal court where it's more expensive or state court where it's certainly far less than the federal court filing fee. Do I like this idea? Do I wish the money was coming out of General Funds?

**HUGHES:** One minute.

**LATHROP:** Sure, that would be great. I'd like to see filing fees stay down, but the challenge is that the judges' retirement account can't count on that from year to year. We have a system where it's financed in part by filing fees, and I think as long as that's the system we have, this bill is necessary. And while I appreciate Senator Cavanaugh's concern-- believe me, I appreciate Senator Cavanaugh's concern that for some indigent people every dollar matters. But this is about providing for an increase to take care of the retirement. And by the way, historically, we haven't increased these fees. These have been stingily, if I can use that word or make one up, provided for by the Legislature and, under the circumstances that we find ourselves in, I think are appropriate.

**HUGHES:** Time, Senator.

**LATHROP:** Thank you.

**HUGHES:** Thank you, Senator Lathrop. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President. Good morning, colleagues. I stand in opposition to Senator Cavanaugh's amendment and to the Retirement amendment and to LB17. So I am sorry, Senator Cavanaugh, that we are in discord this morning. I oppose this amendment because it doesn't eliminate the fees; it just puts a cap on the fees, and I don't believe that this is the way that we should be funding government is through fees. And I hope Senator Groene appreciates this conversation this morning. We had this conversation over the fees for the DMV system, and I agree with Senator Groene that that isn't the appropriate way for us to have been voting-- or funding the DMV system, either, but that is how the department came to us, and unfortunately, and I do regret voting for that out of committee because we should have amended it to come from the budget, the state budget. We shouldn't be funding things on fees. Our fees already are our taxes and this is just another type of tax, and it's a tax that isn't equally distributed and equally impactful to those that it is placed upon. Senator Lathrop, I am going to correct you for the record. The Supreme Court does-- is Agency 5 in the budget report. They do come before the Legislature for General Funds, so I do believe

that there is an opportunity to have them come before the Appropriations Committee to request an appropriation of funds for their retirement, and I think that it is entirely reasonable to expect that that is what we do. I don't think that anyone thinks that judges shouldn't have retirement after serving in public service for the time that they do, but to do it on the backs of those that are using the court system-- we pay taxes. Is the building paid for fees? Is the electricity paid for fees? Is the court reporter paid by fees? If that's true, then why aren't we reducing our taxes? We have over \$700 million set aside for property tax credit that people may or may not know. Again, I can give that tutorial later today, but people may or may not know that they can get this property tax credit. And for the people that aren't claiming this property tax credit, I'm told it just sits there. Well, if it just sits there, then why aren't we reappropriating those funds and putting them towards these retirement accounts? We-- we keep trying to add fees to everything and I-- I don't remember my first two year having this-- years having this many fee discussions, and I can only think it's because Senator Ernie Chambers really opposed fees and nobody would pass these out of committees because they knew every single bill would be filibustered for hours and hours by Senator Chambers. And yet here we are, 56 days into no Senator Chambers, and we have fee after fee after fee bill on the floor. And I am culpable in that. I did vote for a fee for the DMV and I shouldn't have. I should have worked to find a different way to do it, and I acknowledge that. We can do better by the people of Nebraska and we can honor the legacy of the work that Senator Chambers did to support people who have less resources. I appreciate that Senator Lathrop doesn't have to take into consideration the court fees for where he's filing, but most people have to take into consideration the court fees when they have to go to court. And increasing fees, if you are a low-income family and you are going through a divorce and you are perhaps in an abusive relationship and every penny counts, increase the fees, an increased obstacle to making that separation a reality, is unconscionable.

**HUGHES:** One minute.

**M. CAVANAUGH:** I don't agree with Senator Cavanaugh's amendment, not because he cut the fees but because it doesn't go far enough to cut them entirely. I don't agree with this way of funding government. And frankly, I think it's a little bit lazy for us to just raise fees instead of looking at our budgets and finding ways to pay for government. If this is a service that's worth providing, then we should be providing it. We shouldn't be levying additional fees on, as the Governor would call them, our customers. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Thank you, Senator Machaela Cavanaugh. Senator Groene, you're recognized.

**GROENE:** Thank you, Mr. President. Let me clarify, Senator Cavanaugh, my stance the other day. If you remember, I did not take an anti position against the fee for the purpose of-- of creating that new software system. My complaint was that it continued forever and ever, amen, the fee. And Senator Hansen and I tried to put some-- some accountability and fiscal common sense into that fee. I-- when I was on the Retirement Committee-- I removed myself this year-- I'll tell you, I've read a lot of things in my life, but the most boring thing I ever read was an actuary study. I-- this fiscal note is absolutely the worst one I've ever seen in my life. I was going to ask Senator Kolterman what the-- what the 5 percent would amount to, and I see he did have a handout here where he was able to calculate it, but apparently the Fiscal Office was not. So in 2023, the estimate, and you can correct me, Senator Kolterman, if I'm wrong, is \$1.31 million that will be out of the General Funds, and then it keeps going up, of course. Senator Kolterman, I-- I didn't ask you beforehand, but I got a couple questions for you. They're nice questions. Would you take a question?

**HUGHES:** Senator Kolterman, will you yield?

**KOLTERMAN:** I certainly will.

**GROENE:** What is the percentage of the employee contribution for the judges?

**KOLTERMAN:** For the judges right now?

**GROENE:** I missed it. You said something about 14 percent and schools, I believe, are 9.8.

**KOLTERMAN:** The judges, it-- it's based on the tier that they're in as a judge, but it-- it-- it's-- it averages 8.5 percent--

**GROENE:** All right. Thank you.

**KOLTERMAN:** --for the employer contri-- employee contribution.

**GROENE:** One more question, did you look at renegotiating the benefits? I believe it's a defined benefit package. I mean, if the money isn't coming in, you did a good job with the teachers moving it from 55 to 60 when I was on the committee and some other things to help create a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

solid, firm retirement system. Did you do anything with the judges or did I forget?

**KOLTERMAN:** We did not do anything with the judges at this time.

**GROENE:** All right. Thank you. First thing, I don't think 8.5 percent is enough. You're-- these judges are 40 and 50, have made good money in the free-- in it for years. They probably had a private retirement account that's built up pretty high. They get good benefits, and it's a very short period of time they serve in their careers because they have to have a track record. They should be contributing at least as much as the teachers or more. It should be 12 percent or more, I would think, because they're in a good position already financially. They had a private career. Why should the state taxpayers spend 5-- start adding 5 percent to a system that was funded by the user, user fees? I'm fully in support. And by the way, if anybody knew previous Senator Nordquist, he was-- had the position as Chair of Retirement prior to Senator Kolterman. I was on that committee and he brought fee increases. He brought fee increases. And, of course, Senator Chambers defeated it. So it's been a long time coming. Stay out of court and you don't pay the fees, simple as that. You know, one sidebar, I drive every single week since I've been here, whoever is investigating my per diem; every single week that I've been here, I've gone home and I come back the next day, the next-- after the weekend. I've got things to go-- do at home. But if the State Patrol would start issuing speeding tickets on the interstate, maybe the fees would go up.

**HUGHES:** One minute.

**GROENE:** It's not safe out there. But anyway, that's a sidebar. But anyway, I can't support this 5 percent. Let's go back to the drawing board and negotiate something with their benefits. Let's raise their participation fee. At least, it should be as high as the teachers pay for a short career. Senator Kolterman is pointing at me. He wants to answer a question or make a comment. I'll gladly yield him some-- yield-- I'll yield you the rest of the time. Thank you.

**HUGHES:** Senator Kolterman, 28 seconds.

**KOLTERMAN:** I was just going to answer your question. I visited with my legal counsel, and we have not made any changes to the plan for the judges since I've been Chair. But in 2000, when-- when-- when the last Chair was there, they did put in a new tier, so they did make some changes to the plan about six years ago. But other than that, and you're absolutely correct, Senator Groene, that--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Time. Senator. Thank you, Senators Groene and Kolterman. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. I rise opposed to all these fee increases, and the reason for this retirement one is that I think judges in the judicial system play a heavy role in our current mass incarceration crisis that we have in this state. And I wanted to ask Senator Kolterman a que-- one question. Would you yield, Senator Kolterman?

**HUGHES:** Senator Kolterman, will you yield?

**KOLTERMAN:** Yes, I will.

**McKINNEY:** Senator John Cavanaugh pointed out that when individuals are seeking to have these fees waived, it's very difficult for it to happen. And I was wondering, in your discussions with Chief Justice and whoever else you may have been speaking to, have they been-- have-- have you have-- been having a conversation about making these-- these waived fees more accessible for individuals that can't afford these fees?

**KOLTERMAN:** All I know is that in my discussions, they-- they talk about what-- what constitutes the lack of income. And-- and the fact of the matter is they do waive fees at times. I can't tell you how they establish-- they do that, Senator, but they do waive fees, and the diversion programs, those-- those things eliminate fees as well. So I-- I didn't have the-- I-- I don't know what prom-- you know, what allows them to waive fees and what doesn't allow them to waive fees. I don't have an answer for you on that.

**McKINNEY:** OK, thank you. My thing with this is judges are going to retire at some point and we're still possibly going to have this problem with the fees and individuals not being able to pay these fees, so they end up getting warrants and things like that. And I know so many people that deal with these issues. And I think if this is-- if-- if this fee increase is tied to retirement, I believe the judicial system should take a more active role in making sure those that are most vulnerable are taken care of and not just being penalized because they can't afford a fee. And I would like to see more conversation about that, because until they come to the table and take a more active role in decreasing the amount of people that are in the Douglas County Jail, the-- for-- for these fees, I can't support this-- this increase because it just doesn't speak to them actually doing anything to help people. It's just we're increasing fees,

they're going to get retirement, and this issue is still on the table. I think we need to have that conversation that if they want these fee increases, what are they doing on their end to make sure the most vulnerable people in our communities across this state are able to access these-- the-- get these fees waived? Because if-- if it's not easy, like Senator Cavanaugh pointed out, then what are we doing? We're incarcerating people because they can't pay fees. There's people sitting in a county jail right now because they can't pay fees. There's people losing their jobs, breaking up families and things like that, because they can't pay fees. But they sit in the county jail for months at a time because they can't pay these fees and it just accumulates over time, and that's the issue. What is the judicial system doing to help those that are most vulnerable? They want fee increases. I would love to see a more active role from our State Supreme Court, our judicial system--

**HUGHES:** One minute.

**McKINNEY:** --in making sure those that are most vulnerable are taken care of. Until that happens, I don't know if I would ever support a fee-- fee increase tied to retirement. You can't retire comfortable and there's thousands of residents across this state that aren't comfortable because they're being penalized because they can't pay a fee and have to sit in county jail because they can't pay a fee. That's not fair to anyone, and we really have to think about that and have that conversation. If that conversation hasn't been had, about what is their role in making sure those that are most vulnerable are taken care of, it needs to happen. And I yield the rest of my time back to the Chair. Thank you.

**HUGHES:** Thank you, Senators McKinney and Kolterman. Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. President. I have nothing but respect for the work Senator Kolterman has done around this issue. I know these negotiations as it pertains to how to work out retirement plans are fraught. There's a lot of push and pull, and we've seen it in-- particularly in Omaha with both the police and the fire contracts in the last 20 years. We've seen it with the Omaha Public Schools pension. We've had problems with funding those, and so this is a difficult issue. And so I appreciate the work that goes into this. And well, obviously, I can see when I'm beat, so ultimately I will pull this amendment, but I want to talk on it a little bit more. My biggest concerns are the ones that have been addressed by a few folks here, which is the criminal justice system. Senator Lathrop, I know, talked

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

about that the civil court is not as big of a concern. I, again, have represented people who have been found indigent, meaning that they had-- did not have the ability to pay, and many of them did not have the ability to pay bonds to get out of jail. Again, I brought a-- brought a bill to try and eliminate cash bail, which again is a number of people are being held purely on their inability to pay cash money to the courts to get out of jail pending their case. But I would wonder if, to alleviate those biggest concerns, if Senator Kolterman and the-- the stakeholders in this would consider amendments that would-- well, first, I'd like to see it not apply to criminal courts as it-- particularly, the-- I-- I don't like all of the fees. There are, I think, at this time currently 46 fees. A number of them-- or, I'm sorry, \$46 in fees. A number of them have been raised in the last several years, as well, not just the judges' retirement. But the judges' retirement one, as it pertains to the criminal court, I do think has a different, negative connotation to it. When the judges are getting a financial interest out of the result-- as Senator Lathrop said, another point is when there's an acquittal, the fees are not charged, which means that if a judge you try-- have a bench trial and the judge finds you not guilty, the judges' retirement would lose \$12 under this-- this structure, which, again, I don't want to impugn the character of our judges. I have a high opinion of many of them and have worked with a number of them in Douglas County, and I think they are all good, hardworking people who are trying to make the right decision. But the problem is, when people are in the criminal justice system and they are being prosecuted and they find that they-- they don't think they're getting a fair shake for a number of reasons and they look and see that the judge got paid, got money out of the result of this case, that certainly looks bad to those people and it undermines their confidence in the system. And so I would ask-- ultimately, as I said, I'm going to pull this amendment, but I would be interested in bringing maybe a further amendment that would strike the application of the judges' retirement fee specifically from criminal cases. Those are the cases wherein the judge, I think their outcome is-- is based on the judge's opinion a lot of the time. And those are the cases where those individuals are not necessarily choosing to be there and those individuals are-- many of them are found indigent by that very same court, meaning they do not have money. Secondarily, I think I would consider an amendment wherein we just say, if you are found indigent by the court, qualifying you for an appointment of counsel, the fees would be automatically waived in that instance.

**HUGHES:** One minute.

**J. CAVANAUGH:** I had a conversation with Senator Moser off the mike. Just to reiterate what I was saying earlier, in my years of representing indigent folks, I think I've only successfully gotten the court to waive fees twice. And that means out of the thousands of people that I represented who were found to be poor, no court-- only two courts found that those indi-- individuals qualified for the discretionary waiver of fees. So I think this is a good discussion. I think we should figure out how to fund this-- this fund and other funds. I think it's important that we figure out how we fund retirements. I do not think this is the right way to do it, so I'm going to push my button again, but when I do that I'm going to pull this amendment. Thank you.

**HUGHES:** Thank you, Senator John Cavanaugh. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I rise unsure of whether I support Senator Cavanaugh's amendment. I know I don't support LB24 and the committee amendment, but I do support Senator Kolterman's underlying bill. And frankly, it's always hard for me to ever stand up opposed to anything that Senator Kolterman does, but, unfortunately, today I'm going to do that mostly because I have questions. And so I'm hoping that I can get through my questions quickly, and then I'll yield the rest of my time to Senator Kolterman so he can have an opportunity to answer these. So listening to the debate so far, I mean, the question that I have and Senator Cavanaugh, M., brought this up, why can't we have General Funds pay for this increase? So we've got the money in the budget. Why can't we do this? That seems like a logical question to me, and I'm not really hearing the answer. All I've heard is that we've done this historically, which I can accept, but what stops us from it happening now? As written, it provides for automatic fee increases beyond our time in the Legislature. And, you know, I remember Smokey the Bear telling me to always leave my campfire the way that I found it, make it safe for everybody. Are we leaving our campsite in a good condition for who comes behind us? And I'm not sure that that's what this bill does, so it makes no sense to me that we're leaving this for others to have to deal with in the future and I always take issue with things like that. So then I started thinking about what if, say, Game and Parks did this or some other state agency? Well, I bet they'd come unglued. Maybe that's just my own-- own interpretation, but from what I've seen, that's not something that's real popular around here. So why would we let any state agency automatically increase a fee five years down the road? So those are questions that I'm hoping, when I yield my time to Senator Kolterman, that he could address for me. I, in general, am OK

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

with LB17. I'm not OK with LB24, not because I don't believe it's not needed, but how we're funding it. And so with that, I would yield any time I have left to Senator Kolterman so he has an opportunity to address this.

**HUGHES:** Senator Kolterman, 2:25.

**KOLTERMAN:** Thank you, Senator Blood, and thank you, Mr. President. I want to-- I want to talk a little bit about the process that we utilize from a-- from a committee perspective in answer to your question, Senator Blood. My committee is in charge of making sure that these plans are funded adequately, and so what we do is we take a look at the plans on an-- on an annual basis and we look at, OK, how are they funded, how many dollars are going in, how much contribution is needed from the employee, how much is from the employer, in many cases, and it doesn't matter which plan we're talking about now. And then once a year, we have an actuarial study that comes in and they make a report and tell us where-- where we stand with each one of these plans. And we work very closely with the Public Employees Retirement Board. In recent years, we've been working with the OSERS board, Omaha Public Schools, and we also work with-- with NPERS and-- and the Investment Council. All those things play in. The fact of the matter is, the plans themselves were established in statute, so this plan that the judges have was established in statute in 1955.

**HUGHES:** One minute.

**KOLTERMAN:** And so we've done some studies of that, but the-- the-- what we haven't done, and-- and I have attempted to do this. I attempted three years ago to talk to the judges about making a change so that the money would come from General Funds and that money that they receive from fees would go back into the General Funds, rather than doing it the way we're doing it. But ultimately that didn't work out and I-- at that time, I wasn't willing to buck the judges. I don't know why we would. It's been working. The plan is 97 percent funded and so it's funded very well. But at the same time, it's my job to make sure that we don't lose ground on that funding and my committee's job. And so we take a hard look at that and when-- when the-- when we see the funding going the wrong way, we go to where the source is and figure out how we're going to make that change. So the 5 percent that we're putting into this plan that we're recommending--

**HUGHES:** That's time, Senator, but you're next in the queue, so you may continue.

**KOLTERMAN:** Thank you. So the 5 percent that we're recommending is intended to smooth things out, just like we do with the teacher retirement at 2 percent. I mean, we're talking major dollar differences because there aren't near as many judges as there are teachers in this-- in the-- or educators in the-- in the education retirement plan. But the reality is that 5 percent would be there until the-- and it can't be any more than that, according to my bill, but it would be there until the plan is 100 percent funded for two years. And then after that two-year period, we get information from the actuary. They make recommendations to the Governor and to the Legislature. They come back and they negotiate, OK, can we lower it to, let's say, 3 percent or could we lower down it to even 0 if we don't need it, if investment returns are going gangbusters, for example? But the bottom line is we're trying to get all these plans funded at 100 percent. If we-- I mean, that's the long-term goal, because once that's done, then-- then maybe we do have some room and we can back things off. But we're working with the-- the plan that we have. So to completely change how we do that would be a major change to that plan, and I've-- I've attempted to talk about it, but I've had no success in doing so. So we-- we-- then, since we weren't able to change the way it was funded, we look at alternative ways to make sure that it's sound financially, so that's how we've gotten to where we've gotten. Now I will tell you that we're really-- the-- the fees, we're really not changing the fees in the plan, but we are changing the earmarks to the fees. And-- and that, I think we passed out a page that showed that earlier. The other thing I would tell you, what Senator Groene was talking about is, the 5 percent state contribution, and these are projections, but they're-- they're projected to go, and starting in 2023, \$1.31 million, \$1.34 million, \$1.38 million, \$1.42 million, and they just keep increasing up to \$1.65 million in the year 3031. [SIC] But even with that 5 percent and this fee increase, we aren't-- we aren't projected to be 100 percent funded in-- in 10 to 12 years. And so, again, because of-- because of inflation, because of the people being hired, because of what we're paying out, it's just remarkable, the costs that are associated with these plans. But at the same time, if you were to talk to the judges, they would tell you that the reason they want these strong plans, and the Chief Justice is-- is adamant about this, is he recruits judges. It's hard to get somebody to want to be a judge when they're in the-- were in the private practice and they're making a lot of money, become a judge. And, granted, you might get to set your own time frame and you might-- but you don't get a lot more-- you don't make as much money in pri-- you make more money in private practice or you have that ability. You can't do that. So we have to give them good benefits and one of the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

better benefits is a retirement plan. So I hope that answers some of the questions that you have. I would appreciate a green vote on AM461 and LB17. With that, if-- if anybody has any additional questions, I'm here to try and answer them. Thank you.

**HUGHES:** Thank you, Senator Kolterman. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President. So I'm looking at this page 10, which is what Senator Cavanaugh's amendment that I-- I-- I just can't say enough how much I dislike Senator Cavanaugh's amendment. But page 10 is what his amendment seeks to amend, on AM461. And looking through it, in addition to the fees, it says: be taxed as a cost in each-- and this is-- this is where we're-- we're getting the fees from: civil cause of action, criminal cause of action, traffic misdemeanor or infraction, and city or village ordinance violation filed in the district courts, the county courts, and the separate juvenile courts, filing in the district court of an order, award, or judgment of the Nebraska Workers' Compensation Court, or any judge thereof pursuant to Section 48-188, appeal or other proceeding filed in the Court of Appeals, and original section-- action, appeal, or other proceeding filed in the Supreme Court. So it's a lot-- it's a-- it's a lot of places where those fees are collected. And again, in reviewing the budget, I appreciate that it wouldn't be an easy process, it would probably be very complicated, but I do believe that it is our job to do complicated things. And it is not the-- the responsibility of the courts or the administration to determine how government is funded. That is essential-- that is the essential part of our job, that and oversight. So I appreciate that the courts at the time were not interested in pursuing this-- this change, because it would be difficult, but it is still our responsibility as a Legislature to determine how we fund government, and fees are an unfair tax that people don't necessarily know about. I would like to yield the remainder of my time to Senator Wayne if he would like it.

**HUGHES:** Senator Wayne, 3:00.

**WAYNE:** Thank you, Senator Cavanaugh. Colleagues, actually, I just left court and got here, so this is an interesting topic to have when I was just in front of a judge. I just want to remind everybody closely what Senator Kolterman said, and I want to put it in the context of what we're doing. The fund is currently at 97 percent. They're almost fully funded. If we do nothing, it is projected within ten years for it to be fully funded. The problem that I have is the-- is the consistency from Senator Hughes's bill to the DMV bill. We are raising fees at a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

time we have more money than we know what to do with pretty-- essentially. We have \$211 million on the floor. We have 120 to 130 technically unaccounted for in some prison fund. And what this fee increase does is only increases it about \$1.3-1.8 million a year. I don't understand what we're doing. This isn't a pension that need-- that's in problem right now. We are increasing fees during a time of a pandemic and a time when we have enough money in our General Fund for the next two years to put \$4 million into this fund. That's essentially what we're talking about is roughly \$3.2-3.6 million. We can just do \$4 million into this pension fund and not raise fees on anybody at a time when we have more money down here than we know what to do with. That's the part that I'm-- I'm lost on why the liberal is bringing up this during a time when we have money. Where are the conservative colleagues here saying this is a bad idea, that this is a increase in tax? And there is a correction. We did raise the ju-- judges' retirement fee in 2009 and it had a sunset provision, and then in 2014 we removed the sunset provision.

**HUGHES:** One minute.

**WAYNE:** So we've already raised the fee, particularly for judges' retirements and pensions around this-- around this area. I-- I just-- I really don't understand, when we have extra dollars, why we are raising fees on people who have a hard time paying them anyway. That just doesn't make sense when the pension is 97 percent funded, even if it was 93 percent funded, that in ten years it'll-- it'll be 100 percent funded. We're just trying to speed up that process. And I understand protecting it long term. My wife works for the court systems. I get it. I-- I-- I need retirement to be good for our-- for her-- for-- for me, because down here I'm not getting a retirement, so I get it. But I don't think the time is now, and I can't stress that enough. The timing of this is just ill--

**HUGHES:** One minute.

**WAYNE:** --ill fated.

**HUGHES:** Time, Senator.

**WAYNE:** One minute or--

**HUGHES:** Time, Senator.

**WAYNE:** Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Thank you, Senator Machae-- Machaela Cavanaugh and Senator Wayne. Senator Groene, you're recognized.

**GROENE:** Thank you, Mr. President. I am speaking because I used to be on this committee. I just don't see the panic when we're well in the 90s funding of this right now. I can't find the chart, but it was 97, 98-- it's somewhere here-- presently of funding this. Yeah, we're 97.3 percent this year, expect to be 95.8, an assumption, and even if we wait ten years, we're only down 94.3. The school one isn't even close to that. The State Patrol is below that; they've been rising, which should scare the heck out of all of us, is they've been rising because of this unbelievable stock market that's pie in the sky, but which hasn't been-- you don't count your stock market until you cash it in. But anyway, I just do not like the auto-- any autopilot on a 5 percent increase that just-- it's a line item so easily to change because that's what happened with the state contribution for the school retirement, who went from 0.7 and now we're at 2 percent increase. I still believe the employees should be paying in more. Maybe we need less employees if we got less court cases, and less judges, maybe we ought to look at efficiencies there in the procedures. But I think we ought to see what the fees do first before we start throwing money at it. The system works pretty well now with the ARC system where we can decide how much to because I'll tell you what's going to happen. If that stock market goes south, there will be an ARC also. It will have to be; it'll be the 5 percent plus whatever the ARC payment is. That's what the actuaries tell the state they have to add to keep the-- the retirement system on track. Don't know how to say it over and over again, but I do not like autopilot legislation where we just throw 5 percent at something, then 6, and then 7, then 8, without negotiating with the-- with the union. I don't know if you'd call it a union, but with the judges. And I'll reiterate what Senator John Cavanaugh said. The judges are good people. There's nothing wrong with them. I'm just talking about management here, and we're the managers, and benefits that we offer, not the individuals themselves. But 97 percent and we're going to put more money into it without considering first looking at the increase. And by the way, somebody has been going around telling you we're going to save \$8 million, the state will, in ARC payments if we pass this. You will save \$8 million in ARC payments if you pass the fees, if you pass the fees. It has nothing to do with the 5 percent, by giving the 5 percent that you would save over-- that's how the state would save money, because they wouldn't have to make as big of ARC payments. But I can't support it with-- I'm going to wait to see what the Governor's amendment is. I guess I'll wait to see what the Governor's, working with Senator Kolterman, amendment is

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

to see if we can grandfather some of this 5 percent fee and see-- so that is the message to the judges that they maybe need to negotiate on their-- their portion that they pay in and maybe take another look at their benefits. So thank you, Mr. Sp-- President. And we'll-- hopefully, unless somebody says something--

**HUGHES:** One minute.

**GROENE:** --I think is false, I will not stand up again.

**HUGHES:** Thank you, Senator Groene. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. President. So I am not in favor of the underlying AM8-- 8-- AM884-- or AM461. There is a couple of things in there about the state contribution I'm somewhat supportive of in the underlying bill. I did tell Senator Kolterman I'm not going to spend a whole lot of time on his bill, but as long as there's amendments up there, I am going to talk and I'm keeping my word to that. I just think the biggest problem that I have is, to Senator Groene's point, when looking at other funds and other pensions, there are a lot of other funds and other pensions who aren't fully funded, as this one is. And this one is based off of user fees. And on my drive down here, I was listening and I kept hearing from Senator Lathrop, Senator Kolterman, and others that this isn't the proper way we should be doing this, but we've been doing it since the 1950s so we'll just continue to do what we've always done. As Senator Halloran has pointed out to me, that's kind of how we always are. But at some point we got to make a change. And I don't know if it's too big of a change to do it on the floor or right now. But at the end of the day, increasing user fees just doesn't make sense for \$4 million, \$4 million. Yes, we can project it out long term and we can do those things, but if we have extra dollars on the floor, \$4 million is not a whole lot out of 211. And if that can save somebody \$50 from debating whether or not they can file for divorce, whether or not they could file an action against a neighbor, and many of these people don't understand how to file something without having to pay a fee, because actually you have to have a hearing to prove that you're in a poverty situation, so people don't even understand that part about how to even file something. So you're talking about filing fees for everything, filing fees for any type of litigation, and we're going to increase that fee to cover a \$4 million gap over two years when we have \$211 million on the floor. And I don't know if my colleagues are really paying attention and this is just going to move through or not move through, but we really have to think about that. We have money on the floor that we're setting aside, \$115 million for a prison reform reduction,

but yet we can't find \$4 million for the same system to not increase user fees. I just don't know what we're doing down here. And I haven't-- I went through the budget, read it all last weekend, and there are some things I-- I don't really like. I would like to move all the money out of the Property Tax Credit Fund and put it into the one that we adopted last year; at least it's a little more equitable. There's a couple other things that I just don't really get along with, but it's not like I want to filibuster the budget, and it's not like it was my first year with Title X. There was nothing super controversial in there. There's things I don't get along with, but when we keep passing fees on and we have extra money, it makes me feel different about the budget. It makes me feel like, why are we giving or appropriating all of this money to different organizations, but the people who need it the most, people who need access to the courts, are getting an increase? I'm having a hard time understanding that. There are bills about lowering property valuations for school districts, bonding authorities, and putting more automatic money into the tax credit fund and all of this thing based around all these dollars.

**HUGHES:** One minute.

**WAYNE:** But the people who need it the most, people who need access to the courts, we're going to increase. And the-- and the crazy part about it is that is a fundamental right. Unlike the DMV, that is a privilege. You have a privilege to drive. But access to the courts to protect your constitutional rights is completely different, and we're imposing a new increase on your-- to protect your constitutional rights in the court system when we have more money in the budget right now than we really can allocate. We're coming up with new ideas. We're coming up with we may one day build a prison, let's put \$115 million aside. But when you want to protect your constitutional rights in the court of law, we're going to increase your fees during this time. I don't understand it. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Wayne. Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. Chair-- Mr. President. Colleagues, as I said, I intend to pull this amendment. I just wanted to talk one more time on it. I appreciate the discussion. I think it's important. And I just wanted to, I guess, tell an anecdote about court fees causing people to be incarcerated. So you can look and search on Google the Douglas County warrants, and you can go and see how many outstanding warrants are in Douglas County. It's a little hard to tell, but there are a lot of them. And if you know what you're looking for, you can

tell which ones are failure to pay fees and costs and things. So maybe just take a look at that at some point and you can see how many people are out there, have these fees hanging over their head in their daily life. So in my time, I've represented a lot of people who have had problems paying their fees and who have spent time in jail. I had one time, one incident where a person actually won a trial in county court and that upset some people, and so they checked to make sure and saw that they had a time-pay warrant, meant that they hadn't paid a fine, which, of course-- or fines and fees, which meant that they were taken into custody because they had an outstanding warrant. So then, of course, I had to run around and get a judge's signature to get them into court to get that warrant canceled so that person didn't get taken into custody for failure to pay fines and fees after they just won a trial on a separate issue. So these things can be used. Obviously, they have this unintended consequence, which we love to talk about around here, but of costing people, causing people to lose driver's licenses, causing people to become incarcerated, but they can also be used in abusive ways and they can be used to incarcerate people purposefully. And so when we're adding more fees onto that, it-- it's going to increase the number of people who are unable to pay and, therefore, have it hanging over their head. The other thing I wanted to point out is we have a pretty standard practice, at least in Douglas County, where people will sit out their costs. And that takes about a day, which means that you can be sitting in Douglas County Corrections to sit out your costs, which in this particular instance we're talking about who's paying for what, that \$6 cost currently, and \$12 with this bill is adopted, would be borne by Douglas County Corrections because they're paying for the incarceration when this person is sitting out that fine or that-- those fees. And so this, it's-- I'd like to see what the numbers are, but I would tell you, it's going to be a nontrivial amount, meaning that there's a substantial amount of money, of fees that are sat out in Douglas County, which means that we, the taxpayers of Douglas County, are paying that fee through that-- that process into the-- the judges' pension to make sure that those fees are-- go-- I guess met, as opposed to being waived. So I think I'm going to pull AM840-- AM884. I appreciate the discussion. I think we need to have a much bigger discussion about how we're going to pay for this. Senator Wayne made some very good points and I'd like to continue that discussion. But I-- like I said, I know when I'm beat and I know that I don't have the votes for AM884. And so I appreciate Senator Kolterman humoring me for this discussion this morning. And with that, I would withdraw AM884. Thank you, Mr. Chair.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Without objection, so ordered. Senator Wayne, you're recognized.

**WAYNE:** Thank you. I am bringing an amendment-- it's being drafted-- to strike the user fee increase and just do a direct appropriation for \$4 million for at least this biennium, and then in two years we can have a conversation about user fees. I don't know if it'll be done before all the votes are taken today, and I don't want to take up a lot of time on General File. I will probably take up some time on Select File. I just-- I can't stress how we are-- what we are doing here with fees. And so to give you an idea of the user fees and what have happened over the court cost is so the civil docket fee is still \$14. That doesn't change. But the docket fees and judge retirement, again, it was \$6 and it increased in 2005 from \$6 to-- \$5 to \$6. And then in 2009, they changed the statute for all judges, so it still went up from \$5 to \$6. 2014 was supposed to be the sunset. The sunset was removed, which I think in part is why the-- the pension or the retirement became healthy to 90-something percent. The legal service fee went up in 2016 from \$5 to \$6. The automation fee actually increased from \$6 to \$8 in 2009. 2003 was when the education fee was established, and the dispute resolution fee was established in 2003, too, and those were both zero to \$1 or zero to \$0.75 cents. The Indigenous Fund-- Defense Fund, which is a fund that we should probably talk about and have a little bit more discussion about how that fund is actually being used in the caseload by those attorneys, went from \$2.75 to \$3 in 2005, which was an increase. And then again, in 2003, there was a uniform data analysis fee that was established from a zero to \$1. So my point is, is over the last 15 years, we've increased user fees in this area. I don't think we as a body can continue to kick-- continue to kick the can down the road on how we fund these retirements. We can't keep saying, well, that's the way it's always been done and-- and our hands are tied. We just can't do that anymore, especially at a time when we have money to make whatever changes we need to make to the pension. But if we don't want to take on that heavy lift right now, then why don't we just put \$4 million into the retirement fund now, this year, which would actually give you a little bit better interest rate because of net present value of dollars; if we do a user fee, which are collected over a two-year period over time, periodically, you actually get a little bit more money that way. And if we do that right now, then we don't have to do it. Now to put this in perspective, colleagues, every dollar increase on a user fee only generates about \$320,000 to \$350,000 across the state for-- for any-- any user fee regarding the court system. That's how much it generates based off of current trends of filings. Filings

were down, and part of the reason why filing-- filings are down over the last year is because of COVID. I do a lot of litigation and I have to sit down with my clients and say we can litigate this, but you're a year and a half to two years out on a jury trial that may take five days or more, because we got all these backlogs of criminal cases that have to be done first for speedy trial reasons, constitutional reasons. So most of my clients are settling for what I consider penny on the dollars. And these are legitimate, not just personal injury. These are legitimate business disputes--

**HUGHES:** One minute.

**WAYNE:** --because neither side wants to wait a year to two years to go to court because of the backlog that COVID created. So that's part of the reason why filing fees are-- are-- our cases are down. What's not down, ironically, is the number of felonies that are being charged. Ironically, we are charging more felonies than-- than anything that we ever have before. So this user fee is actually a misnomer because if you charge somebody with a felony, unless it's a Class IV felony, you're never going to collect that user fee. That's just a fact, because if you've got more than a Class IV felony, you're going to be sentenced to jail, most likely. If you're sentenced to jail, you're not paying your user fee. You're sitting it out in county or you're sitting it out in-- in the penitentiary. So it's never-- and you get roughly \$60 a day is what it comes out to when you sit in county jail. So most people aren't paying these user fees, and that's part of the reason, is because if I'm charged with a felony, I'm not going to pay the \$50--

**HUGHES:** Time, Senator.

**WAYNE:** --when I'm going to be sentenced anyway.

**HUGHES:** Thank you, Senator Wayne. Senator Hunt, you're recognized.

**HUNT:** Thank you, Mr. President. I also rise in opposition to raising fees on people who use our court system. I feel like lawmakers often don't oppose these kinds of fee increases because they seem superficial or it just seems like something very small or we look back historically and we say, oh, yeah, maybe we should increase fees, maybe it's time to do that. But the people who pass these laws know that they are probably never going to be the people who have to pay these fees or have to struggle to pay these fees. And bills like this and policies like this is just how lawmakers, the ruling class, continue to chip away at the privileges and the rights and the quality

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

of life and the ability to provide of the people in Nebraska who are already struggling. We clearly need time to amend the fee increase out of this bill so it can move along, and I understand Senator Wayne is working on that. I have really appreciated what Senator Wayne has been talking about. I didn't realize that we were just trying to cover like a \$4 million gap in the pension, which is almost fully funded. That's something that we should be paying out of the General Fund, not passing down to the most vulnerable people in Nebraska, the poor people of Nebraska who are proportionally more likely to be single parents, proportionately more likely to be working several jobs to make ends meet, to be taking advantage of other assistance programs like Medicaid or SNAP, to be people of color, black and brown people, to be people who are from other countries, of nationalities who maybe struggle with the English language, and certainly people who struggle to afford legal counsel. So to raise fees on these people, it's not going to be easy for them to afford, and that point has been made several times. But I wanted to rise and add my voice to the chorus and share my conviction that we can't increase fees on people who are already struggling in Nebraska. Also, in this Legislature and in this state government, you know, whatever branch of government you look at, we have had a lot of trouble gathering will and support to do anything to support people of-- who are indigent, who are poor, who deal with poverty, and who face really difficult life circumstances. I-- I harp on this quite a bit and I'm happy to do it. We have the lowest tipped minimum wage in the entire country in Nebraska at \$2.13 an hour. That's what servers are allowed to be paid in this state. Who do you think the people are who are going to struggle most from this kind of legislation if it passes, LB17 with the amendment? It's those people who are working these low-wage jobs, and so all of us in this body are saying, oh, these are-- these people, they shouldn't have done anything wrong then, why are they in court if they-- if they're innocent or-- you know, I know some of you think that. And yet we don't do anything to support them and help them lift up out of poverty so that they can actually afford the things that they need to do. I brought a bill to try and increase the tipped minimum wage by one cent from \$2.13 to \$2.14, and it still would have been filibustered on this floor, let alone completely getting rid of the tipped minimum wage and the two-tier wage system that we have in this state that keeps so many people down and keeps so many people from being able to rise above and have a living wage and have the dignity and be able to provide for their families the way they should be able to. Another thing is access to food assistance. Nebraska is one of the only states that tells people, if you have ever had a drug conviction, if you've ever been

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

convicted of drug use, possession, or distribution, and we know how unevenly that's enforced--

**HUGHES:** One minute.

**HUNT:** --that you will never be eligible for food assistance in Nebraska. I talked to nonprofit organizations in Omaha who have clients where, faced with the horrible uncertainty and economic upheaval of the pandemic of this past year, they go in to try to apply for some benefits, typically for the first time in their life they're looking for a hand, and then they're surprised to find out that they don't qualify because in 1996 or 1997 they had a drug possession charge, so tell me how that's justice. So I would be likely to take seriously a question in this Legislature about if we're going to raise fees on people if the rest of you would take seriously the ideas we have to support the people who are going to be facing the burden of these fees. It has to go on both sides or we don't have any balance in our society. If we're asking people to bear more burden, we have to do something to lift them up as well. And when we talk about attracting and retaining people in Nebraska--

**HUGHES:** Time, Senator.

**HUNT:** Thank you.

**HUGHES:** Thank you, Senator Hunt. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. President. I am going to introduce an amendment here and then I'm going to talk about it for a while, see what kind of response we get. I'll probably pull it, but I will put it again on Select File and have a straight up-or-down vote (1) because I-- in fairness to Senator Kolterman, I did not-- I just literally wrote it as I was driving down here, and so-- but I do think it's important we have this conversation at least a little bit this morning of what I'm thinking about and then move on before-- before we get to lunch, get a vote on-- on the underlying bill for Senator Kolterman. But-- but in fairness to Kolterman, I want to make sure he-- he reads the amendment and the body reads the amendment and we can have that further discussion and vote on Select File. But I have to-- as I left court today and I saw the number of people down there, it hit me a little differently as I turned on NETV and was watching-- or listening on the way down here, listening to everybody say we shouldn't do it this way, but we don't know how to do it any other way, so let's just keep doing it, and I just think that's wrong. So, again, I'm going to talk a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

little bit more here in a minute, but I will-- thank you, Mr. President.

**HUGHES:** Thank you. Senator Hunt, you're recognized.

**HUNT:** Thank you, Mr. President. I wanted to continue my thoughts that I was just sharing. If we're talking seriously about attracting and retaining people in Nebraska, we're often only talking about the people who are working higher wage jobs, people in tech, people moving here to work at startups, which we have an amazing startup community here in Nebraska. We have a lot of different businesses that are doing very innovative and interesting things, but at the expense of sometimes the people who are already in Nebraska and who have put down roots and who are sending their kids through our school system and they're trying to start a business or they're trying to give back to their community. But when they look to their lawmakers and their government leaders for help and support, we don't have anything for them. We only have things for the people who are already successful. We have tax breaks and tax credits for people who are already running successful businesses. We have incentives for people who are already working high-wage jobs. But if you are one of those servers who's working a \$2.13 an hour job and you're a single parent and maybe you've got a drug conviction from way back in the '90s, so you can't receive food assistance, you can't afford an attorney, so you're trying to fumble through the court system on your own, maybe you're a survivor of domestic violence and you've got to get involved in the court system through no fault of your own, what we're doing is we're putting on that person an extra fee, over \$4 million that we could easily appropriate from the General Fund? None of us should be OK with that. None of us should be OK with that. So when we talk about wanting people to put down roots in Nebraska and wanting this to be a place where people want to live, the quality of life doesn't just mean for the middle class; it means for the working class and for people--

**HUGHES:** One minute.

**HUNT:** --who face incarceration, who have to navigate our court system, and those are the people who are typically in poverty already. And I don't want to be a part of something in this body that's going to continue to oppress them or continue to hold down their ability to rise above the circumstances that many times, again, this is no fault of their own. And investing in the good life here in Nebraska, it doesn't just mean attracting people with college degrees and people who are going to start businesses and people who are going to work, you know, low six-figure jobs at our tech firms here. It means

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

supporting the people who have already invested in our communities, who have children to support, who have families and are often caregivers, as well, helping their family members or their parents through, you know, bad health circumstances, especially after the pandemic. So for that reason, I can't support this amendment and I look forward to seeing how this conversation develops and--

**HUGHES:** Time, Senator.

**HUNT:** -- what further amendments we can introduce to solve this problem. Thank you.

**HUGHES:** Thank you, Senator Hunt. Mr. Clerk for items.

**ASSISTANT CLERK:** Mr. President, Senator Wayne would move to amend the committee amendments with AM900.

**HUGHES:** Senator Wayne, you're welcome to open on your amendment.

**WAYNE:** Thank you. My amendment is-- is very short. It's a one-pager. Usually none of my bills are even close to one page. And again, I'll probably push my button a couple of times, engage in a conversation with a couple folks, and then we'll-- we'll go ahead and vote. I do think-- I do think we have to have this vote on Select File or at least some-- there are some things I like. I like the 5 percent contribution so we can budget for and keep those things going. I just have a fundamental problem with raising a fee, and you've heard me say that from Senator Hughes's bill to the DMV bill to now to this bill, raising a fee during this time. And I have a bigger issue with we're raising a fee, what I would consider, on you being able to exercise your constitutional right. So what was left here and what people weren't talking about here is all the cases that are dismissed. The county picks up those fees, so this is also an unfunded mandate to the counties because that fee is still going to get paid; at least, I've never seen the fee get waived in Douglas County for a criminal case when not guilty or-- and in fact, today there were two, two preliminary hearings before mine in which the cases were dismissed, so that means they were initially charged with a felony and then, for whatever reason, they got more evidence and they dismissed the case or they didn't have enough evidence; when the prosecutor looked at it again, they dismissed the case, but there's still a fee on there. Now the defendant doesn't have to pay, but the county does. So for-- again, for exercising your constitutional rights. And particularly out west, it seems to be litigation around land disputes. I've seen-- at least the litigation that I've seen, you're exercising your

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

constitutional rights and we are increasing a fee for you to do that. I do think there's a distinction with the DMV because you're exercising your privilege. You're exercising your privilege to be able to drive. But what this AM900 does is it strikes all the fees and it just says we'll do a direct appropriation, we'll create this expense fund for \$3 million. Now, again, I called my staff as I was driving down here at 9:30 and said, put this amendment together, which is why I'm hesitant to vote on it right now, but this is the area that I'm going in. I'm going on Select File in this area. And the-- and the reason is, is we have \$211 million on the floor. If we pass this, we're down to 208. If we go to \$4 million, we're down to 200 and whatever-- 7. But at the end of the day, we still got another \$200 million. I mean, I-- I just don't understand. So again, talking about user fees, there was two cases this morning which the county has to pay. That user fee has to be paid by something. So all those cases that get dismissed, all those cases that motion to dismiss, which is usually the loser in a civil case has to pay, we are literally increasing fees and we have more time to do with it-- more time-- more money right now than do with. So I'm not going to keep beating a dead horse. I think this is the direction I'm moving to. I do think we should have a 5 percent contribution. I can figure that out from now until Select. But on Select, we will have a long discussion because it's oftentimes the communities that-- at least in Omaha, that are overly charged, heavily charged, multiple charges, multiple cases, and then many of them end up getting dismissed. But many of them, sometimes you plead to a fee of-- of a-- of-- literally I pled to a fee of a dollar, and it was because it's just a ticket and nobody really cares about it. But then they have to throw on an additional \$50 for-- for a fine and which I've had clients say, I'll go sit in jail for a day. They'd rather sit in jail for a day than pay the \$50 because, quite honestly, they don't have it. That's-- that's this crazy balance that we have. So anyway, this is what the amendment does. If nobody's in the queue, I guess I'll close. But I just wanted the body to see where I'm thinking about we should go. I'm thinking about how we should fund at least this two-year gap that we're trying to do for the next two years when we have more dollars than we right now know what to do with. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Wayne. Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. President. Thank you, Senator Wayne, for bringing this amendment. This-- I rise in support of AM900, Senator Wayne's amendment. It addresses a lot of my concerns, which is that-- that increase in fee, and puts the funding on General Funds. So we've

had a lot of conversation about whether-- well, one, that we have to do this and it's our responsibility to make sure that we fund these; had a conversation about where this money should come from, and I guess that's maybe a fundamental disagreement about whether we should pay for these ser-- these fees, pay for judges' retirement through a fee for service or we should pay for it through General Funds. I think that it's our responsibility to make sure this fund is fully funded and-- and, therefore, we should pay it through General Funds. But I also think that the-- that it is inherently wrong to fund someone's position with fees that they accumulate from their judgment-- sitting in judgment of others. But further, this is a bad idea for the reasons we've discussed, which is an increase in fee of any amount is going to marginally decrease people's access to the courts. If we increase the fees \$6, there will be people who will make a decision not to pursue a small claims action or some other court-- access to the courts because it pushes it above the-- the point at which it is equitable or works for them. So we do have to consider that, that we are closing off access to the courts to some people. We don't know how many, but it will close off access to the courts to some people. Also, this increase in fees will push some of those court-- criminal court fees above a individual's ability to pay, which means more people will fall into that category where they can't pay their-- their fee, their court fees, where they get a warrant, where they lose their license, where they go to jail and spend time in jail. When that happens, when people go to jail unexpectedly, they'll-- they tend to lose their job. I think the-- the stat is, if you're in jail for three days, you'll lose your job and you-- the next step is you lose your housing. And people who get into that position, then they become more of a drain on society where they are going to be needing emergency housing assistance, where they may need unemployment assistance, where they may need help getting other benefits, and those are all things that are the unintended consequences, as we say. But really, those are the intended consequences of the criminal justice system. Incarcerating people is going-- has that effect and we should be conscious of that. So when we're talking about how to make money, we have to understand that the cost of making this money is a bigger cost to our society as a whole and that we bear those costs, and then those have downstream costs that then we pay in other ways. And so by increasing this fee, we are going to increase the number of people who are unable to pay this fee; we are going to increase the number of people who are incarcerated as a result of inability to pay fees; we are going to increase the number of people who will not have their driver's license because of their inability to pay fees. We're going to increase the number of people who then are driving without a license, who then are

finding themselves arrested again, who then are not able to afford insurance because of their crim--- their interactions with the criminal justice system, who can't get their license back, who then are dri-- continuing to drive, and the cycle continues and it becomes a cycle of a cost to our society that we complain about. We spend a lot of time here trying to figure out how do we pull out of this vicious cycle of incarceration and cost associated with it, and it starts at the most basic level. It starts with \$6; it starts down at the court costs. And that's the thing we can address today and make sure that we are not making it harder for people to access the courts, we're not making it harder for people to stay in compliance, we're not making it harder for people to stay out of jail. People--

**HUGHES:** One minute.

**J. CAVANAUGH:** People want to pay their court costs. They want to not have a warrant hanging over their head. They want to have their driver's licenses. They want to pay these fees. They want to be-- feel like most of us do, which is not having the state looking over your shoulder every minute. And we-- by adopting Senator Wayne's bill, we will at least stay status quo-- Senator Wayne's amendment, we will stay status quo. If we adopt LB17 as it is, we will push people further down that path, and that is the wrong way to go. Thank you.

**HUGHES:** Thank you, Senator John Cavanaugh. Senator Kolterman, you're recognized.

**KOLTERMAN:** Thank you, Mr. Speaker. I appreciate-- or Mr. President. I appreciate the opportunity to speak. AM900, I would hope that we-- you-- Senator Wayne pulls that bill. He said he was going to-- amendment. I appreciate that. I'd just like to say that this is really good discussion. I-- I-- I'm not-- I'm happy we're having this discussion on the floor of the Legislature simply because I'm hearing loud and clear what I've been preaching for a long time, the fact that we're not funding this the right way. But if somebody's got a better solution, I'm-- I'm all ears and I'm always willing to work with you. I will tell you this, that if we-- if we amend this on Select, I'll need some time to work on that because if-- if we make an amendment like that, it-- it needs an actuarial study. Every amendment that costs money like this to the state will need an actuarial study. That's in statute. So, Senator Wayne, if you want to bring that, bring it to me early if it gets to Select, so I appreciate that. Other than that, I appreciate the discussion and I look forward to the vote on this bill. Thank you.

**HUGHES:** Thank you, Senator Kolterman. Senator Matt Hansen, you are recognized.

**M. HANSEN:** Thank you, Mr. President. And I appreciate all the comments this morning, and I appreciate Senator Kolterman indicating he is interested in looking at funding this a different way. And I would be supportive of switching over to some other system, including General Funds. Fundamentally, I wanted to click my light on, and many of the people who have spoken this morning have really hit the points that I wanted to make and intended to make, but I just wanted to make sure that I was on the record too. When we think about this, when we think about our county jail population, I would just like to remind everybody that most of the people in the county jail haven't been sentenced to jail time. They're either still awaiting trial, so the pretrial detainees that either couldn't afford bail or were denied bail or had some condition like that, or they're sitting out fines and fees. And-- and obviously, sitting out fines and fees, I don't have a fundamental objection to that in the sense of, you know, somebody owing a debt to society and having to pay it and paying it by sitting it out in jail rather than paying cash seems to be, at minimum, a functional system that people understand. One thing I do want to point out is that when we talk about paying a debt to society, it should be paying the debt to society. It shouldn't be paying the debt to a pension fund for the judges. And that is what-- some of my fundamental issue with raising court costs is it starts to diverge from the actual cost and operation of running that courtroom that day. So the-- even the argument of it being a user fee starts diverging and diverging a little bit more, what it is specifically tied to, you know, underfunded actuarial projections of-- of-- of the pension of one person who's in that courtroom that day. Here in Nebraska, our sit-out fee is \$150 per day. That was picked on a bill that at the time court costs averaged about \$49 and the lowest fine for some of the misdemeanors was \$100, and so combined that was \$149 and you could sit out the lowest fine in Nebraska in one day. If we keep raising court costs-- I know there's different bills proposing to do different things. If we keep raising-- raising court costs, that's probably something we're going to have to look at and restructure because we're going to be pushing a lot of people who have, you, know, a \$100 fine for an open container, who can't pay it, who are now going to spend two days in jail rather than one day in jail, not because the crime changed, not because the punishment changed, but because we raised court fees by \$6, by \$12 over a couple of different bills, what have you. And that's something I think we need to be very mindful of, is we're fundamentally, you know, very impacting people's lives by having

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

very small amounts, as Senator John Cavanaugh and others have very pointedly shared this morning. So I rise with similar sentiments. I'm hopeful we can work between now and Select to get a different plan so that the court costs don't keep increasing. And with that, I thank the body for their time this morning. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Matt Hansen. Seeing no one else in the queue, Senator Wayne, you're welcome to close on AM900.

**WAYNE:** Thank you, Mr. President. And, colleagues, I just want to-- while-- while people are here, hopefully listening, I don't know if people really listened to what Senator Cavanaugh, John Cavanaugh, said about sitting out fines. So if-- in Omaha, if I have a \$50 or \$60 fine, I could sit-- sit one day, or especially if I'm sentenced to a day. I just sent it out-- they ran concurrent, so I sent it together and I-- and I sit it out. That is a cost beared to the county. So we increase court costs, we are increasing costs beared to the county. The two cases that I saw today that were dismissed, those which should have been \$120 today or \$100 and-- \$105 or something around there today, the-- the county is paying that. So we increase these court costs, every case dismissed by the prosecutor, the county bears that, so we're also increasing the cost on the counties. The last thing I want to say is, Senator Kolterman, you have the amendment. I'm willing to do \$4 million if-- I think that covers the cost of what you are doing. So we could-- we could work on an actuarial study off of \$4 million, sounds good to me because I do like the 5 percent. I do like what you are trying to do as far as making sure the fund is-- this-- the fund itself is sound going forward. But, colleagues, as of right now, I am going to withdraw AM900, but I am still going to ask you to vote-- or not vote on AM461 and LB117 [SIC--LB17] for a couple reasons, and I'll be brief. One is it's 97 percent funded right now. It's already funded. We are going to raise fees of a tune of about \$1.5-1.8 million, of which we have money in our budget to do that. It's projected to be solvent for a long time as compared to NPERS, which is like 86 percent funded, and as compared to OSERS, which I know Kolterman is going to solve this year, which is like 68 percent funded. So I think it's an opportunity for us to make sure we look at all the pensions as we have this pension conversation, how we fund them, but I will still be present, not voting, on AM61-- AM461, LB17. If this goes to Select File, I will bring an amendment. Hopefully we will have actuarial study done around \$4 million general appropriations to cover that cost, and we can have a broader discussion over the next two years of how we fund our court systems. So with that, Mr. Clerk and Mr. President, I withdraw AM900.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUGHES:** Without objection, so ordered. Seeing no one else in the queue, Senator Kolterman, you're recognized to close on the committee amendments.

**KOLTERMAN:** I'd like a call of the house and-- and a roll call in regular order.

**HUGHES:** There's been a request to place the house under call. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**ASSISTANT CLERK:** 31 ayes, 2 nays to go under call, Mr. President.

**HUGHES:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chambers please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Lathrop, Pansing Brooks, Linehan, Brewer, and Hilkemann, the house is under call. Senator Kolterman, you're recognized to close on your amendment.

**KOLTERMAN:** Thank you. I appreciate the opportunity to close on the amendment, and it'll be my closing for the bill unless there's further discussion. Appreciate the discussion this morning. It's been very eye opening, so to speak. It's been-- it's just been good conversation. Before I get too far into this, I think there are some people that have worked hard on this with me. I'd like to thank them. As Chair of the Judiciary Committee, Senator Lathrop worked with me and the Chief Justice in crafting this-- this idea. I-- I appreciate the work. Senator Stinner worked with us on trying to figure out how we could put-- how much money we could put into a plan as a-- as an employer contribution to help stabilize and smooth things off. The Governor is continuing to work with us on this. He knows the importance of having a well-funded plan. And then the Chief Justice has been involved for three or four years now, and then Kate Allen, my legal counsel, who keeps me on top of things here. When we talk about these plans being funded, the state and county plans have been funded at 103 percent for several years now. The judges' plan, I-- I agree with Senator Wayne, it's at 97 percent. He says, what's the hurry? Well, the reality is my job is to make sure we get them to 100 percent and we keep them there. And that means that in the-- in a retirement system, it sometimes takes a long time; even though we're at 97 percent, it's going to take us over 10 to 12 years to get it at 100 percent, even if we hit all the benchmarks that we're supposed to hit. Again, those are just pro-- projections. Our school retirement system is at 92 percent and the Patrol system is at 88 percent, so those five plans that we have are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

all well funded. I think we need to take a lot of pride in the fact that Nebraska plans are nationally ranked in the top 10 percent consistently. There's a reason for that. We're proactive. We work. We look at things like that. I don't like this fee increase any more than anybody else in the body does. But the reality is I have to work what's given to me-- I have to work with what's given to me, and the plan at the current state is in the-- it-- it deals with fees. And-- and the-- and the-- also the reality is, the fee increase over the next five years is actually \$6.75. Now there are some earmarks in there. That just means a larger percentage goes into the retirement plan from what's already being paid, but \$6.75 over the next five years is what the actual cash increase is to these plans. So with that, I would hope that we can advance AM461, LB17, and I look forward to working with Senator Wayne and-- and Senator Cavanaugh, whoever else wants to come and talk with me about fixes that can happen between now and Select File. With that, thank you very much.

**HUGHES:** Thank you, Senator Kolterman. Colleagues, there's been a request for a roll call vote in regular order. Mr. Clerk.

**ASSISTANT CLERK:** Senator Aguilar not voting. Senator Albrecht voting yes. Senator Arch voting yes. Senator Blood not voting. Senator Bostar voting yes. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator Briese. Senator John Cavanaugh not voting. Senator Machaela Cavanaugh not voting. Senator Clements voting yes. Senator Day not voting. Senator DeBoer voting yes. Senator Dorn voting yes. Senator Erdman voting yes. Senator Flood voting yes. Senator Friesen voting yes. Senator Geist voting yes. Senator Gragert voting yes. Senator Groene voting yes. Senator Halloran voting yes. Senator Ben Hansen voting yes. Senator Matt Hansen voting yes. Senator Hilgers. Senator Hilkemann voting yes. Senator Hughes voting yes. Senator Hunt not voting. Senator Kolterman voting yes. Senator Lathrop voting yes. Senator Lindstrom voting yes. Senator Linehan voting yes. Senator Lowe voting yes. Senator McCollister voting yes. Senator McDonnell voting yes. Senator McKinney voting no. Senator Morfeld voting yes. Senator Moser voting yes. Senator Murman voting yes. Senator Pahls voting yes. Senator Pansing Brooks voting yes. Senator Sanders voting yes. Senator Slama voting yes. Senator Stinner voting yes. Senator Vargas not voting. Senator Walz voting yes. Senator Wayne voting no. Senator Williams voting yes. Senator Wishart voting yes. Vote is 38 ayes, 2 nays, Mr. President, on the adoption of the amendment.

**HUGHES:** The amendment is adopted. Discussion on the advancement of LB17 to E&R Initial? Senator Kolterman, you're welcome to close on the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

bill. Senator Kolterman waives closing. Do you wish a machine vote on this, Senator, as well?

**KOLTERMAN:** No. Machine vote.

**HUGHES:** Machine vote or regular roll call?

**KOLTERMAN:** Machine vote is fine.

**HUGHES:** Very good. The question is the advancement of LB17 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

**ASSISTANT CLERK:** 35 ayes, 5 nays on the motion to advance the bill.

**HUGHES:** The bill advances. I raise the call. Some items, Mr. Clerk?

**ASSISTANT CLERK:** Thank you, Mr. President. Your Committee on Enrollment and Review reports LB501, LB65, LB105, LB224, LB414, LB265, LB312, and LB180 all to Select File, some with E&R amendments. In addition to that, a new resolution, LR84 by Senator Williams, recognizes the retirement of Director of Insurance Bruce-- Bruce Rame. That's all I have at this time.

**HUGHES:** Thank you, Mr. Clerk. We'll proceed to General File, LB644.

**ASSISTANT CLERK:** Mr. President, LB644, introduced by Senator Ben Hansen, it's a bill for an act relating to revenue and taxation; to adopt the Property Tax Request Act; change certain dates relating to tax levies; harmonize provisions; repeal the original sections. The bill was referred to the Revenue Committee. That committee placed the bill on General File with committee amendments attached. Those amendments are pending. When we considered the bill yesterday, under consideration was AM854 by Senator Halloran, which was an amendment to the committee amendments.

**HUGHES:** Senator Ben Hansen, you're recognized for a few minutes to bring us up to speed on this bill again, please.

**B. HANSEN:** Thank you, Mr. President. I'll be brief here. LB644 is to adopt the Property Tax Request Act, otherwise known as the truth-in-taxation initiative, for the purpose of increased transparency for impacted political subdivisions that intend to raise property tax levies. LB644 recommends public notifications and hearings for the public whenever the need for justification is necessary to raise their property tax over the previous years. LB644

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

requires a postcard be mailed to all constituents in relation to the political subdivision's request for higher levy rates that cannot exceed a previous request. So appreciate, again, all the debate and look forward to any more questions that people have on it.

**HUGHES:** Thank you, Senator Hansen. Would you care to open on committee amendments? I'm sorry. Senator Linehan, would you care to open on the committee amendments? Just a refresher, please.

**LINEHAN:** OK, thanks. The committee amendment just makes some technical changes. First, probably the biggest one is it's only the four entities that will be on the postcard; it's the county, the city, school districts, and community colleges. So thank you, and I would appreciate a green vote on both 7-- AM755 and the underlying bill, LB644. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Linehan. Senator Halloran, you're recognized to open on your-- not to open, to refresh us on your amendment, please.

**HALLORAN:** Thank you, Mr. President. Good morning, colleagues. Under AM854-- first I want to-- I want to thank Senator Ben Hansen for allowing me to amend this to his bill. The source of this amendment came from LB189, which was heard in front of the Revenue Committee and was voted out of the Revenue Committee, 7 proponents, 0 opposed, and one present, not voting. And this bill is-- this amendment-- under this amendment, political subdivisions would be required to include the repayment of a TERC-approved overpayment of taxes in their next budget, making sure that the repayment happens in a timely manner. Additionally, this would require an interest rate of 9 percent to be paid where currently no interest is assessed. Currently, if an individual does not pay their property taxes, they are required to pay an interest rate of 14 percent. This would bring the political subdivisions more in line with this requirement. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Halloran. Debate is now open on AM854. Senator Arch, you're recognized.

**ARCH:** Thank you, Mr. President. I have been listening carefully to the debate and I just had a few comments that I wanted to make this morning for the record. I don't have to go back through the history of-- of how we are here. We've been-- we have been attempting to increase transparency over the years and several bills and-- and accomplishing much in the-- in-- in doing that. I think, frankly,

transparency is probably the primary way that we as a Legislature have, increasing that transparency to make sure that the voters understand what-- how the elected officials are behaving, including us, and-- and how we are handling the taxpayer dollars that are entrusted to us and in our stewardship. So I certainly support what is going on and increasing that transparency, and this is certainly another attempt to do that. I was listening-- I particularly was listening to Senator Flood yesterday as he-- as he referenced, I would say, probably a mutually shared frustration on the part of the Legislature here, because it-- we all go back to our districts and one of the questions that we get is, what are you doing about property taxes? And-- and of course the response is, we don't levy property taxes, nor do we expend those property taxes, that is a local issue, and yet I say we're-- we're certainly in it together. This morning, as we were listening to Senator Stinner in the budget briefing, I think the number now is \$700 million that we are applying to this in an attempt to help with some of that property tax relief. But certainly on the-- the one side that we don't control is that expenditure side. We do-- we-- we are able to provide some property tax relief from some other tax dollars, but we don't control the expenditure side. And it's hard to find a-- a-- a common or a-- a-- a blanket policy to apply to all of the counties that we represent here. We are-- we are-- we come from very different counties and the issues are very different within those counties. I happen to represent a portion of Sarpy County and Sarpy County is-- is, like every county in this state, different than the others. And we-- we have issues there regarding growth, regarding roads, regarding a jail, regarding things that are specific to our-- our county. And so I want to raise-- I want to raise a few concerns on the mike this morning as it relates specifically to Sarpy County and some of the issues that we may be facing there that I would appreciate some consideration. I know that-- and I-- I very much appreciate Senator Hansen's willingness to take a look at-- at multiple issues that have been brought to him, a possible amendment that could be brought on Select, and so I would just raise several of those issues specific to Sarpy. One is-- one is the issue of growth; not common to all counties, but it is common. It's what's going on in Sarpy. We're-- we ex-- we are experiencing growth. And I know that not only do assessed values increase the property tax issue in-- in Sarpy County and in all of our counties, but also, in Sarpy County, maybe we have a unique situation or-- or one of the few counties where a growth factor would also be part of that equation, and that is that at times the revenue increases as a result of growth, not just assessed values. And would there be any opportunity for consideration of-- of a growth factor in whatever formula as to whether or not this would be

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

triggered, a special hearing, a special briefing? And-- and so growth factor is one that I would-- that I would appreciate some consideration on. The other has to do with auto increases. There-- there is necessarily-- or, I should say, not necessarily--

**WILLIAMS:** One minute.

**ARCH:** --but there is automatically some inflation factors that occur. Wages increase. All of that increases. Right now, it's flat. As to what triggers this, it's-- it's at zero. Any increase would trigger this, and I was wondering if there would be anything there. And-- but the bigger-- the bigger issue, and I know that this is in discussions right now and-- and-- and not widely embraced, but it has to do with the cost, the cost and the complexity. So-- so I guess I would-- I would encourage a closer look, more serious look at the cost and the coordination of these mailings, the complexity of the data in the mailings. I anticipate some counties and some-- some other jurisdictions are going to struggle with this. And perhaps there would be a solution where shared cost and shared coordination of those mailings could be done at a state level. With these amendments, I would strongly support what is going on here, and I would just encourage consideration of those things that I've raised this morning.

**WILLIAMS:** Time, Senator.

**ARCH:** Thank you.

**WILLIAMS:** Thank you, Senator Arch. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. President. And let me say I appreciate it when you're in the Chair. I can hear it. It's good. Senator Arch made a comment about when we go back to our districts they ask you, what are you doing about property tax? My answer is the consumption tax, which will eliminate property tax, so it's a pretty easy answer for me. So as I listen to the discussion about sending out a card of notice, I want to share a story that happened, an incident that happened last summer. I was invited to go to a school board meeting and address the school board. And I had arrived early and we had a little town hall discussion before the meeting. And there were-- as in my district happens a lot, we had a school district in one county, but it had property in another county. And Senator Linehan had a bill that if they were going to raise the tax ask-- tax asking, they had to have a special hearing for that event to happen. And two ladies had shown up from the neighboring county and their taxes had gone up. But because the school district didn't levy or raise any more tax dollars, they

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

were not required-- they were not required to have a hearing. And so the ladies were frustrated that they didn't get notified that they were going to in-- get an increase in taxes. And when I spoke with the superintendent, he said, because we didn't ask for more dollars, even though the valuation went down in the county where the school was-- was located, the valuation went up in the adjacent county, so their taxes went up. But the people in the county where the school was went down, so that was neutral, so they didn't have to have a hearing. So my question I'd like to ask Ben Hansen if-- Senator Hansen if he'd yield.

**HUGHES:** Senator Hansen, Ben Hansen, will you yield?

**B. HANSEN:** Yes.

**ERDMAN:** Senator Hansen, did you hear my explanation of my incident?

**B. HANSEN:** I've-- yes, I was talking with another Senator, but, yes, I caught part of it.

**ERDMAN:** OK. So if-- if, in fact, in the-- in the district, the school district that-- where the school was, their valuation had gone down, they didn't have an increase, but the next county over had the school land-- had school land in the next county and their valuation went up and they had an increase in property tax, would they get a card notifying them that their taxes went up?

**B. HANSEN:** If their taxes went up, yes.

**ERDMAN:** OK, I appreciate that. I think that's important that these people understand, before they get to the school board meeting or-- or they get their tax notice, that their taxes are going to go up. So I think transparency is very important here. I think the information is important to have sent out. So I-- I can appreciate that. On the amendment that Senator Halloran has, I-- I had said this, I believe, yesterday. If we, the taxpayer, for delinquent taxes pay 14 percent, I don't see any reason why those who have our money shouldn't have to pay us 14 percent interest while they have our money. But he's very generous. He put it at 9 percent, which I think is-- is probably appropriate. So I'll be supporting both of these and we'll move forward to see what happens. I appreciate that. Thank you.

**HUGHES:** Thank you, Senators Erdman and Ben Hansen. Those in the queue are Senators Clements, Hunt, Dorn, and others. Senator Clements, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**CLEMENTS:** Thank you, Mr. President. I'm in favor of the amendments and the bill, and I wanted to make a clarification. I think there was some comment that the state does not pay interest on amounts owed to people, and I have amended tax returns for the state of Nebraska, tax returns that had refunds like a year after the original filing, and they do pay interest. I looked up-- didn't look-- couldn't find the interest rate, but the IRS also, if-- if you're owed a refund and they're late paying it, they're paying 3 percent interest, and I imagine the state probably is about that. So the-- the state, on income tax owed people, refunds, I do believe it is paying interest to people. And I would like to ask Senator Halloran a question.

**HUGHES:** Senator Halloran, will you yield?

**HALLORAN:** Yes.

**CLEMENTS:** I was wondering-- it-- your amendment talks about a final, nonappealable order. In the process, where does that-- what does that mean?

**HALLORAN:** That was language put in place at the bequest of-- of-- I felt it was at the bequest of Douglas County. Douglas County had a-- a fairly formidable fiscal note in there. And so counseling with them, I thought this language satisfied their concern. What's meant by nonappealable order or other action approving the fund-- refund is basically a TERC-- a TERC ruling and deciding in-- in behalf of the person making the appeal, the property owner.

**CLEMENTS:** You-- so if you think your-- you've overpaid your property tax and you appeal to TERC, you aren't-- the interest does not start at that point. It does-- it starts after TERC makes a ruling? Is that what you're saying?

**HALLORAN:** Thirty days after they make their ruling, correct.

**CLEMENTS:** All right, so.

**HALLORAN:** There's a 30-- kind of a grace period for the county to catch up with all the--

**CLEMENTS:** All right.

**HALLORAN:** --technical detail.

**CLEMENTS:** So, yeah, I would support that. The-- just filing a TERC appeal should not really start the interest running on the tax amount

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

because it's still not quite determined whether you have a refund coming or not. And-- and so this is going to cut down quite a bit on what a county would have to pay. Would you agree?

**HALLORAN:** Yes, I would agree. I think Senator John Cavanaugh is working on some language for a motion to alter this language a little bit to satisfy Douglas County. They had a little concern with the language, so that will come up here shortly.

**CLEMENTS:** All right. I'll-- I'll wait to see what that says.

**HALLORAN:** OK.

**CLEMENTS:** That was all I had, Mr. President. Thank you.

**HUGHES:** Thank you, Senators Clements and Halloran. Senator Hunt, you're recognized.

**HUNT:** Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraska. I share the goal of proponents of this bill to increase transparency around taxes and increases to taxes that localities and-- and different political subdivisions will be levying upon taxpayers. But I think that the purpose is good, but the method is probably not great. I have a problem with the postcard part. I feel like if the state is telling the counties that they're going to have to pay for all these postcards to go out, then the state has a responsibility to fund that. And as we've discussed on the floor already today, we have a lot of money on the floor to work with. And from speaking with the counties, it sounds like they're estimating the cost of this to be over \$560,000 for each postcard to go out because of the time it will take to do the programming for the postcard and the postage. You know, it's not just the cost of a stamp. It's another burden that we're putting on counties. And I would also ask, how often do we talk in this body about how we can't increase the budgets for schools or we can't increase the budgets for political subdivisions because they need to control their spending; before they get more money out of the government, they need to control their own spending and-- and be mindful of their own budgets? But then we put these mandates on them and we make it hard for them to control their spending because we keep requiring them to spend more money. And, colleagues, I think transparently that's the point of this bill. It's to put more friction in the process for localities and for subdivisions so that it completely discourages them from, you know, collecting more money if the valuation goes up or whatever it is. I want to ask if there's a more efficient way that we can increase

transparency for taxpayers, because, again, that's a great goal and I think that's wonderful. Of course, subdivisions already have public hearings on increases to fees, which already re-- you know, we already require and put lots of parameters on. I sit in the Government Committee where we hear bills all the time around things like public meetings and public notification and what's the best channel to tell people about these meetings. Is it the newspaper, should we be requiring people to put an ad in the newspaper or a listing so that the public knows when it is? Or should this be something they can share online on their website? Is that adequate? Well, then what about people who don't have access to broadband and that cuts them out? So this is a conversation in Government Committee that we have all the time, and that conversation about efficiency. And if the cost of this postcard is something that the state should be putting on the counties, which is just going to actually probably end up increasing their taxes, it just doesn't follow logic to say increasing the-- the things that the county is going to have to pay for, for example, these postcards, is going to result in a property tax decrease. Because if the counties are right and this type of thing costs over \$560,000, that's-- who's going to pay for that? Well, the state says we-- we say we're not going to pay for that, and so we know that that's going to trickle down to the taxpayers and they're going to have to end up bearing that burden. I would also suggest that the logistics of having every county going to the copier, going to the-- the, you know, production place and having these postcards made every year is also inefficient. It's a lot more friction. It's a lot more bureaucracy. It's a lot more red tape. And unfortunately, I see this as a pattern for a lot of bills that our colleagues introduce as well. To address a problem, we come up with a solution that costs so much money that it creates another problem.

**HUGHES:** One minute.

**HUNT:** And then we just get buried eventually under all of this government bureaucracy that nothing is being more efficient. And the taxpayers end up having to fund all of that, but then we get to go around to our little town halls if we have them, and say, oh, we really did something to help decrease property taxes, when really all we did was seriously increase the cost to the counties, which then get passed on to the taxpayers. And it's just the continuous cycle and loop of unfunded mandates being passed down to the people who end up having to be responsible for them because we as the state don't want to take responsibility. I don't care if we want to send out postcards, but we cannot put that cost on the counties because then simply that ends up getting put on the taxpayers. And I don't think that it's

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

insulting to say that. I think it's pragmatic, that we need to make sure that if we're mandating this, that we're putting funding in there so that the counties can do it. And maybe this is something that the state should coordinate as well; maybe the state should send out one postcard instead of having the counties have to coordinate all of that. So, again, I would just say this is inefficient--

**HUGHES:** Time, Senator.

**HUNT:** --so probably not the best--

**HUGHES:** Thank you, Senator Hunt. Senator Dorn, you're recognized.

**DORN:** Wanted to talk a little bit about Senator Halloran's amendment here. Yesterday, I know there was some discussion on the floor about how people appeal or counties appeal-- appeal to the counties and then it goes to TERC and all of that. I-- I just wanted to give you a little update or a little walkthrough of what happened in the county I was with, Gage County. I know some counties differ a little bit, but in Gage County, normally-- in most counties, I think, normally, you get your new valuation sometime towards the end of May. Our county assessor always called it your Memorial Day mailing so that you got your new valuations then. Then there's a period of time, 30, 45 days, depends on what the county sets, that you can appeal that. You have to come in; you have to file a form; you have to file a form with the assessor. Generally, sometimes, assessors can walk through you-- with you and explain it and maybe you won't file an appeal. In Gage County, we had approximately 14,000 properties. When I sat on the board for eight years, the highest number of appeals we had was 350. We normally had around 80 to 100 appeals. Then we had a board of equalization. Each county had a board of equalization, which is the county board also, but you had-- we had always a special meeting before our regular meeting whereby those appeals went to the board of equalization. We had a special committee of three members off of our board with the county assessors. That's who you appealed to. We would normally have 30 to 50 of those come in, in a year, except sometimes we'd have longer ones. If that decision based on that board of equalization, then you still did not agree with that, then your other option was, in Gage County, you could appeal it to the whole board. We always had one meeting where we would have 5 to 10 to 12 people come in, appeal to the whole board. If you still did not like the outcome of it, then you appealed to TERC, our Tax Equalization Review Committee. Part of what happened here with-- I'm-- I'm assuming what happened with Senator Halloran's is TERC, they have a backlog. They have-- there's three members that are the deciding people on TERC. When I was on the board,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

I remember one distinct case. He did not like what our county board of equalization did. He appealed it to TERC. He appealed in August. It took a year out before his appeal was heard in TERC. So if you appeal to TERC, I can't imagine-- with COVID they may be farther out than that, so that's over a year later that you are finally heard at TERC for your appeal. They issue a ruling also then. Then your only other option is, I guess, go to court or whatever after that. Otherwise, in our county, most of the cases then-- I don't remember one going on to court, but then that was the ruling on it. Part of what I'm-- also is a real challenge, especially for smaller counties, and I believe Senator Halloran's county was out west. We do not have what I would call sufficient companies, like an ethanol company or an ethanol plant in a-- we don't have four or five of those in a district, so you have to start bringing in other entities that you hire and they come up with a valuation a lot of times on the ethanol plants or businesses like that. I know our assessor always hired an outside company to come in and evaluate many of the commercial properties, so I'm definitely in favor of Senator Halloran's bill. I think that that is something that once a decision like that was made, that that ought to be paid.

**HUGHES:** One minute.

**DORN:** One minute?

**HUGHES:** One minute.

**DORN:** I'm guessing that maybe their budget, that might have been a challenge for them; maybe not, but that should have been paid. So I'm in support of Senator Halloran's bill. I also am in support of Senator Hansen's bill and the Revenue Committee amendment. I do think we definitely need transparency, and I think this is one step towards that. One other quick comment I wanted to make. In the agenda we get today and every day, there's a green sheet now coming with that. I heard a lot of talk about all of the money we have on the floor. This is the second day it's been out, but down towards the bottom it says impact of bills pending. If you look up above, we came with \$211 million to the floor; now it lists \$184 million left. This is an update that everybody gets, a green sheet, that is something that if you want to see how much we do have to spend on the floor, this kind of gives you a guideline. I think this is very important to look at--

**HUGHES:** Time, Senator.

**DORN:** --as you continue to talk about we have all this funding on the floor. Thank you.

**HUGHES:** Thank you, Senator Dorn. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I still am in doubt of Senator Halloran's amendment, stand in support of the Revenue amendment, am not sure that I do support the underlying bill, but I would like to say, friends, that I was happy to hear that Senator Hansen had met with the League of Municipalities and NACO and is trying to make the bill a better bill. But I'm not seeing that in the amendments yet. And I'm always concerned about not having it on General File. We make a lot of deals between General and Select. What I've seen sometimes is that we talk about making those deals and then we get to Select and people forget that we talked about making those deals and we go ahead and pass the bill on through without being changed, and that is one of my concerns. And so I also want to point out Senator Groene was misinformed yesterday that I said that his bill from two years ago was Senator Hansen's bill. What I said was, to make this clear to everybody, that a lot of the things that Senator Hansen's bill says it wants to do transparencywise are things that were already done two years ago by this body. That's what I'm saying, with the exception of the postcards. I believe in transparency. That's not the issue at hand right now. The issue at hand, again, is the mandates. And so I have several questions that I know that Senator Hansen will have an opportunity to speak on, and here's the questions that I have. So under the bill, and I covered this yesterday, local governments, not the state, pay for the postcards. So do you consider LB660-- LB644 to be an unfunded mandate on local governments? I want to hear this sentence from Senator Hansen. And if not, why not? Why can't the state pay for this? It's only fair. We want to keep passing mandates, what I believe to be mandates, onto our local government. Why can't we share in this if it's so important to us? If transparency is important to us as state leaders, why would we not want to pitch in and help pay for this? So what happens if a taxpayer doesn't receive a postcard? What about a renter who doesn't pay property taxes? Because ultimately renters really do pay property taxes. If the owners of the building have to pay more in property taxes, they usually pass that on in rent. So what if they want to attend the joint hearings? Would a renter be allowed to attend? So at the joint hearing, how many political subdivisions could be represented at that joint public hearing? I understand the joint public hearing is limited to cities, schools, counties, community colleges, but what if a county has multiple cities and school districts like Sarpy? Could there be a dozen representatives there? I-- I really-- I don't hate the intent of this bill, but I just feel like it's a one-size-fits-all bill. And you just cannot do that because Adams County, Hall County, Cass County,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

they're different than Sarpy County. We're the fastest growing county in the state of Nebraska. And unlike a lot of counties in Nebraska, we abut each other municipal-- municipalitywise. So everything about the way our county is, is different than pretty much any other county in the state of Nebraska. I don't know if that's been taken into consideration, and so it's going to have to be my job to be the squeaky wheel because I need to do what's best for my county. And I'm not going to pretend that-- you know, we do so many things and then we go out and promote ourselves as cutting taxes and better transparency. But if we're being redundant and really just doing the same thing but changing the words--

**HUGHES:** One minute.

**BLOOD:** --are we pandering or are we being good policymakers? And I'm not sure what the answer is to that, and I'm not accusing anybody of pandering. I'm asking a-- a legit question. But I did have three questions that I just put out there for Senator Hansen. And if I do have any time, I would yield it to him so he has the ability to answer those questions.

**HUGHES:** Senator Hansen, 36 seconds.

**B. HANSEN:** OK, I'll-- I'll do my best there. You were-- you were addressing some of the concerns about some of the amendments that we have coming up here. And one of the ones that I know the counties and the cities both had-- excuse-- excuse me, the schools and the-- and the community colleges was they were concerned that they would have to send the entire school board to the meeting, and it's actually only one representative. And so we're actually putting that into statute. That's one of the amendments that we're going to include on Select File. And so that alleviated a lot of their concerns because they were concerned about, you know, quorum issues and having to send a whole board to one meeting. But actually, they just have to send one representative to the meeting. And I can definitely talk about some of the other amendments and--

**HUGHES:** Time, Senator.

**B. HANSEN:** --address the other questions later. Thanks.

**HUGHES:** Thank you, Senators Blood and Hansen. Senator Linehan, you're recognized.

**LINEHAN:** Thank you, Mr. President. So I've heard several people mention LB103, which we passed two years ago, which was an effort to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

get at this same issue. It passed 47-0-2, so 47 senators voted for it. So then we went home and the following fall what I thought LB103 would do wasn't going-- wasn't happening. So I called people I know in local government and was like, what the heck? That might not have been exactly what I said. And they're like, well, we-- we're not sure what the intent of the Legislature was. Well, I-- I can explain clearly to you what the intent was because it was my bill. The intent was to tell people ahead of time that you're raising their taxes. That's the intent. So we fought through that and then everybody finally decided, OK, well, we'll-- we'll follow-- we'll follow the law, not necessarily the spirit of the law; we'll do the exact minimum of what we have to do to meet the requirements of the law. So now they have their budget meeting at, let's say 6:00 and they have their tax-raising meeting at 7:00. And they do now have to vote to raise taxes because now, under law, if your valuations go up, your levy automatically drops. But I would ask any of you to find a statement by a property taxing authority where they came out and say it: We raised taxes at the meeting today. What they used to say before LB103 was we didn't raise the levy. Now they say the levy stayed the same. They never say we voted to raise the levy back up. I'm tired of getting hoodwinked. The cost? Let's say it is \$560,000. We're talking about \$4.5 billion in taxes. So I forgot to ask my friend here, who's very good at math, but I did have Senator Hansen check. If it is \$560,000, that is 0.01 percent. So to put it in context, if you had a dollar bill in front of you and then you had a penny from that dollar, you would have to divide that penny into ten parts. That's what we're talking about, the cost versus the transparency we're trying to bring to this, a tenth of a penny. There is an easier way to do this, wouldn't have to have a postcard. We just-- people would just have to start saying, we raised your taxes. That would solve all of this. And the people that were against LB103 are the same exact people-- well, I was in a meeting this morning with Senator Hansen, with people who have concerns about this, and three of those people came in against LB103, out of the five people I was in the meeting with this morning. They-- they do not want to tell people they're raising taxes, guys. That's the deal here. They don't want to say it out loud. And why-- the state should send out the postcard? We already have enough confusion about who collects property taxes, so now we're going to send out a postcard saying we're raising them? No. No, the postcard keeps-- needs to come from--

**HUGHES:** One minute.

**LINEHAN:** --the people who get the tax money. You know what we could do with \$700 million if we weren't trying to address property taxes? TEEOSA is only \$1.09 billion. This is 70 percent of what we pay for

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

school funding, guys, we're sending out in property tax relief. Don't you think maybe we should try something else, like real transparency so people actually know who's raising their taxes? I-- we've had conversations ever since I've been here with Senator Wishart. I think Senator Day has a bill to do something about special ed cost. Seven hundred million is three times what we need to pay to increase-- I-- well, I think Senator Day. I can't remember.

**HUGHES:** Time, Senator.

**LINEHAN:** OK, thank you very much.

**HUGHES:** Thank you, Senator Linehan. Senator Williams, you're recognized.

**WILLIAMS:** Thank you, Mr. President. And good late morning, friends. As we discuss LB644, and I do have some comments that I would like to make on that, this bill has been called the truth in taxation, which would seem to imply to some people that are talking that we currently do not have truth in taxation. That comment is very offensive to many of the elected officials that have contacted me in my legislative district. My legislative district encompasses two full counties, Dawson and Custer, and a portion of Buffalo Counties. I have 18 communities in my district. I have 13 school districts and also the community colleges. Two of them are represented. The comments that I have received from them concerning the underlying bill certainly address some of the things that Senator Hansen is working on, potentially, with an amendment: the-- the postcard, the logistics, all of those kind of things. But the part that is bothering them the most is the underlying tenor that there seems to just simply be a lack of trust and a lack of respect for our local elected officials. I think that's the wrong position for us to be taking as a Legislature, is questioning their intent, their work, and what they do. I have been a personal friend of the mayor of Gothenburg, Joyce Hudson, for in excess of 50 years. She works tirelessly for our community constantly, being there while she runs her own business on the side. Marcus Kloepping, the mayor in Cozad, does the same thing. John Fagot in Lexington has been serving the community of Lexington for 27 years. And if he were here today, what he would tell you is, we don't overspend, we have a procedure that works, and we believe the taxpayers have ample opportunity to weigh in on budgets. I'm not opposed to LB644. I appreciate the potential amendments that are coming to ease up the logistics on those restrictions. But I think we as elected officials need to be careful when we're talking about other elected officials that are attempting to do their job in the best way

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

possible. I also would like to make a comment this morning concerning some other very important businesses in my legislative district. On the microphone yesterday, it was said that newspapers are expensive; and then immediately following that, it says, and nobody reads newspapers anymore anyway. I have ten newspapers in my legislative district: the Sargent Leader, the Callaway Courier, the Arnold Sentinel, the Custer County Chief, the Sandhills Express, the Ravenna News, the Lexington Clipper-Herald, the Tri-City Tribune, located in Cozad, the Gothenburg Times, and the Gothenburg Leader. They are absolutely offended by those comments. You've received an email from the Press Association also. They would tell you that they are clearly the source for local news, they are the source for the archiving of that news for the future, and they are also the source of many of the public notices that we're talking about today.

**HUGHES:** One minute.

**WILLIAMS:** And I will tell you, these newspapers build community pride. Again, I would encourage each one of us to be careful what we say on these microphones because they do affect people. I'm proud of those newspapers and I'm proud of the job they do for those communities and all of my legislative area. I would encourage us to continue engaging in rigorous debate on these issues, but also recognize the importance of the other elected officials that are elected by the same people that elected us. Thank you, Mr. President.

**HUGHES:** Thank you, Senator Williams. Colleagues, we're going to break for lunch. We will keep the queue in place. Mr. Clerk for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Communication from the Governor: Engrossed LB22, LB37, LB106, LB106A, LB169, LB351, LB401, LB476, and LB533 were received in the Governor's Office and signed and delivered to the Secretary of State. An announcement: the Revenue Committee will meet today, Wednesday, April 7, in Executive Session at 1:30 p.m. under the north balcony. And finally, a priority motion: Senator Briese would move to recess until 1:30 p.m.

**HUGHES:** Colleagues, you've heard the motion. All those in favor say aye. All opposed say nay. We are adjourned [SIC].

[RECESS]

**HILGERS:** Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

**HILGERS:** Thank you, Mr. Clerk. Do you have any items for the record?

**ASSISTANT CLERK:** I do, Mr. President. LB322A introduced by Senator Williams is a bill for an act relating to appropriations. Appropriates funds to aid and carry out provisions of LB322 and declares an emergency. That will be placed on General File. Additionally, LR85 introduced by Senator Sanders. That'll be referred to the Executive Board for the purposes of referencing. That's all I have at this time, Mr. President.

**HILGERS:** Thank you, Mr. Clerk. We will now proceed to the afternoon agenda.

**ASSISTANT CLERK:** Mr. Clerk [SIC], first item on the agenda today, this afternoon, excuse me, LB644 introduced by Senator Hansen. There are also pending committee amendments from the Revenue Committee, as well as a pending amendment by Senator Halloran, AM854, to the Revenue Committee amendments.

**HILGERS:** Resuming debate on AM854. We have a number of senators in the queue, including Senator Vargas, Senator Groene, Senator Erdman and others. Senator Vargas, you are recognized.

**VARGAS:** Thank you very much, President. So I wanted to have a little bit of discussion here and I had talked with Senator Hansen off the mike earlier about this, and I wanted to see if he would be-- be able to answer some questions.

**HILGERS:** Senator Matt Hansen-- Ben Hansen, sorry.

**VARGAS:** Ben Hansen.

**HILGERS:** Senator Ben Hansen, would you yield?

**B. HANSEN:** Sure. Yeah.

**VARGAS:** Senator Hansen, you know, one of the-- one of the questions I have was about the political subdivisions that this-- most of this act applies to. On our conversation off the mike, we were sort of talking about some that have been excluded for certain provisions. Can you talk about which ones have been excluded and more as to why?

**B. HANSEN:** Sure. Yeah. We originally had nine political subdivisions along with the city, the county, the school district and the community college. We originally had ESUs, NRDs, learning communities, villages, SIDs. But we decided in discussing some of this with stakeholders such as the counties, etcetera, we decided to leave those off because we want to get this in place. I don't want to overwhelm the system, I guess. You know this-- you know, not to be naive, but for the first year, this will take a little bit of planning to-- to-- to get it all going and I don't want to inundate the county with nine political subdivisions right off the bat. And so we just narrowed it down to four, less of a hassle for them.

**VARGAS:** OK. No, I mean, that makes sense pragmatically. My concern was basically that we're creating sort of winners and losers with who's putting more transparency regarding property tax, which we did have that conversation off the mike. So if the intent is to have some more transparency or at least more forward-- forward transparency, that's-- that's a little concern that I have treating them all the same. I understand it'd be cumbersome, but then would be-- we could make the same case that maybe it's cumbersome with the existing subentities that are included in here and we should just start with, I don't know, school districts or the county boards or I don't know who else is left in here specifically, but the ones that you just mentioned. The other question I had was in-- in your language, is it required that the local subdivision has to pass a resolution stating the proposed tax increase? Is that true or is that not true? Can you give me some light on that?

**B. HANSEN:** Yeah, at this-- at this meeting, there's not going to be a vote taken. And some of this is already in existing statute. Well, maybe what you're referring to is the resolution or ordinance setting a property tax request. We changed the date from October 13 to October 15. And so that's where some of that change came from, because we also gave them an extra week so that they have to certify their assessed taxable property by August 20 and then by September 20 they have to adopt their filed budget. So we actually move that down to September 27 to give them an extra week because of the hearing that we're requiring them to do. And so subsequently, we moved October 13 to the 15 of when they have to have the special hearing to give them a little bit more time. So that's where that change was in the bill.

**VARGAS:** OK, that's helpful. I think that was a little bit of confusion on my part on if there was a separate ordinance that had to be put in place, because when you're putting the-- sending the postcard out, does that have to include a vote of the ordinance or resolution?

**B. HANSEN:** No, no, it does not.

**VARGAS:** OK, that's-- that's helpful. And last question. So there's one-- there's one-- a couple of references to who may be able to sort of contact the subdivision regarding these requests. And I know this seems like a small thing, but depending on how this moves and I haven't decided on how I'm going to vote on this yet, but depending on how this moves, I would want to make sure that--

**HILGERS:** One minute.

**VARGAS:** --we're making clear that basically property-- sorry, taxpayers or residents are the ones that can contact, and so there's a couple of references here to citizens may contact. And I figured that was just a little bit of oversight, because if you're a taxpayer, you should be able to then be part of this, as far as I'm concerned, or resident of that subdivision, because you're paying some taxes to that community or that-- that subdivision. So I'm assuming that's just oversight, something that can be looked at between General and Select.

**B. HANSEN:** Yeah, that could be. And that was the intent is for people to make sure that they can contact who's taxing them if they need to for questions, or that's why we included some of it on there, so.

**VARGAS:** Yeah. Well, I do appreciate you bringing the bill. You know, I'm still not sure how I'm going to vote on it and I understand the underlying intent. I have tried to be as consistent as I possibly can on these types of bills. I've brought forward transparency bills for government, some people, Judiciary. I have a transparency bill--

**HILGERS:** That's time, Senator.

**VARGAS:** Thank you very much.

**HILGERS:** Thank you, Senator Hansen and Senator Vargas. Senator Groene, you're recognized.

**GROENE:** Thank you. I'm going to make a couple of comments, but before the break, I handed out a handout, Wheatland-- it's titled Wheatland Industries LLC, and later in my five minutes, I'll address that. But a couple of comments. One of my county commissioners sent me an email that he didn't like it, it's more headaches and going to cost the county \$10,000 to do it. But my answer to him was, I continue to get complaints from county commissioners that they're-- get all the blame. The assessor does the assessment, the valuation, the county sends out the tax bill, the county treasurer gets it, and they get all the blame

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

for the huge tax increase because it came from the county. Well, I would hope that they would appreciate this, the county commissioners now, because there will be a hearing where that school board representative-- I hope it's the school board president, community college president of the board, I hope he's there, she's there, the school, and then they can hear what county commissioners hear every year when people come in and protest valuations. Protesting valuations is just another way of protesting your high taxes for what the school gave you, the community college gave you, the NRD gave you, but right now the county commissioners bear the brunt of it. And it works, folks. It works. Historically, the one taxing entity that is conservative in this state is the county commissioners because they hear from the public. Now, let's make sure the school board does and also the community college hears from those taxpayers. And then the county commissioner at that hearing can smirk and say, now you're getting some of what we get every year when we have valuation hearings. Now to the handout. If you look at it, I got valuation 2014 to '20. This is that ethanol plant in Madrid, Nebraska, Senator Hughes's district, but the headquarters of this is in my district. If you look at that going backwards, 2014, the valuation was 15.5. The year they protested, the year prior to the protest, it was \$16,364,000. That was the same one they had in 2017. After a year and a half of protest and going to the Supreme Court, the Supreme Court lowered it to \$7,336,000. All right? Sounds reasonable. Look at 2018. The county assessor took it right back to 16.6, right back to 16.6 and now it's presently 13.4. Well you say, why did they do that? Because they can. It took a year and a half from the time they paid their 2017 taxes in 2018 to December of '19 when the Supreme Court ruled in their favor. That's a year and a half. Now you say they got another five years, that's six and a half years. But in reality they got six or seven years because if they push it to six years, if you read the statute, they don't have to pay interest of 3 percent or something until the end of the six years. So now they're going to wait seven and a half years before they get their justice. Then you look on the chart below the protest timeline. Of course, they protested again in 2018. It is pending for a TERC hearing yet, over a year and a half later from when they protested to the county. TERC hasn't even heard it. Is that county going to-- if the TERC rules in their favor again, is that county going to protest and take it to the Supreme Court? Now they're waiting another seven years for another hundred thousand dollars hanging out there. And again, they did it in 2019. This system is antiquated.

**HILGERS:** One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**GROENE:** There's too much of a timeline involved. It's their money. As I said earlier, government is not government and us, we are the government. I don't want to take money away from my neighbor that he didn't owe in taxes and make him wait seven and a half years. Here's the other thing. He has to-- he has to protest it every year. More attorney fees, more time in Lincoln for the TERC meeting, and he's still waiting for his first refund of seven-- he's going to wait seven and a half years to get it. Senator Halloran's AM854 is necessary legislation. Government should not take money unduly from a taxpayer, forcibly take it-- comp-- confiscate it is what government does. Try not paying your taxes and you're taking money they didn't even owe. And you're waiting seven and a half years probably before you get it back. No, Senator Halloran's amendment--

**HILGERS:** Time, Senator.

**GROENE:** --is necessary and needed. Thank you.

**HILGERS:** Thank you, Senator Groene. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. Speaker. Good afternoon. Senator Groene, you could not have stated it better about the commissioners get blamed for the property tax going up. But before I get into my comments, I want to share a little bit about newspaper circulation, and those poor newspapers that got their feelings hurt. They can choose not to be offended or they can choose to be offended, that's their choice. So what Senator Hansen said is proper and appropriate. I looked it up and since 2004, 18 daily newspapers have gone out of business. So the comment that people don't read the newspapers is true or the circulation wouldn't have dropped. The other issue is, back when they started keeping records on sale of newspapers in 2000, let's say 2008, there was \$37.8 billion in sales of newspapers and now it's 14.3. So tell me if Senator Hansen was right or not. So I'm sick and tired of people coming around and saying what you said hurt my feelings, I'm upset. You choose-- you choose whether you want to be offended or not. That's your choice. So choose not to be, go out and market your newspaper in a different way if you're not making it. So let's talk about Senator Groene's comments about the county commissioners. You are exactly right, Senator Groene. When I was county commissioner and they'd come in and protest their valuation, every time it was because the notice came from the courthouse. I was the county commissioner chairman, so it was my fault. Over 60 percent, about 65 percent went to the school, and when I asked them if they ever went to the school budget hearing to protest their taxes because they're not protesting their taxes with the county commissioner, it's the valuation. Not one

has ever done that. And so if this card alleviates some of that misunderstanding of where these taxes are being collected and who spends them, this is a good card. And that's exactly what happens. And Senator Groene, when you pointed out what that assessor did on this ethanol plant, that's exactly what happened in our county. We would put a parcel-- we would adjust a parcel down to the number that it should be and the next year she jacked it back up to the same price she had it before. So that person would have to come in and protest again and we'd put it back. We did that two or three times. That's exactly what happens, he described it perfectly. And so we went to TERC on numerous occasions and sometimes we won, sometimes we didn't. And when we didn't win, sometimes we'd have to make adjustments and make sure that we did it right and protected the taxpayer. But the issue is, TERC takes a long time and I have a bill in Revenue that will fix part of that issue and it states the following: If you file a protest with TERC by September 1 and you haven't had a hearing with TERC in six months and they haven't made a ruling by the next time your taxes are due, your next payment, the value reverts back to the property-- the property value of the year before. So they are so far behind, they will never, never, never catch up. And so this gives them an opportunity to catch up. It's a chance for the TERC board to do the job they need to do and listen to the ones they can. And those who are continuing to pay more than they should don't have to. So this is a good bill. Senator Halloran's on the right track. This card is a good card. And I don't believe that what Senator Williams has stated as those people are upset that they have to send a card out, those people are upset because they have to announce a raise in taxes. That wasn't the case when I was county commissioner and it's still not the case in my county. We are concerned about the taxpayer. Our focus was correct and we handled it the same way as if we were spending our money. And so, if your issue is you don't want to send the card out because you don't want to reveal to people, like Senator Linehan had commented, they've tried every-- every trick under the sun to say we didn't raise the mill levy--

**HILGERS:** One minute.

**ERDMAN:** --or we didn't do this or that, and so consequently, this is an opportunity for them to be transparent. And so I'm in favor of these. And I know I got a lot of information from county commissioners that they don't want to send these out but I'll tell you something. It's a bad thing because a lot of these county commissioners, as Senator Groene has stated, are conservative. But not all people who work in county government are conservative. And so I've heard from people already on the 3 percent lid that Senator Briese has. One of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

them sent me an email and said they're going to lose \$404,000 if the 3 percent lid goes into effect. So what that means is, they raise their budget 3 percent and then they raised it enough above the 3 percent to equal \$404,000. So in that instance, it's another-- it's another 7 or 8 percent. So I don't know how they got away with raising it 11, 12 percent, but they did. So they're whining about the fact that they won't be able to tax-- they won't be able to tax you as they normally have and that's a problem for them. And so they've got to learn how to live within their means.

**HILGERS:** Time, Senator.

**ERDMAN:** Thank you.

**HILGERS:** Thank you, Senator Erdman. Senator Hunt, you're recognized.

**HUNT:** Thank you, Mr. President. Senator Erdman has shared with us about how all of the county officials are crying and whining and they're offended and they're sad and how they need to get over that. And he's talking about how not all of them are conservative officials, even though we're in this red state, Nebraska. Well, colleagues, this isn't a conservative bill. The bill is literally not conservative. As far as my understanding of it is, it's more government bureaucracy. It's more red tape. It's more headaches for local officials who are elected by the people who represent and who we should trust to run their political subdivisions in a responsible way. And I don't think that we're in the best position here in the Legislature to look over them and lord over them and say, not only are you spending too much money, but now you're going to have this mandated new fee where you have to print all these postcards, send this mail to all of your taxpayers, which none of the taxpayers are asking for this. And all I'm getting is emails and phone calls and contacts to my office from county officials and county commissioners, people on county boards, people on school boards, people in these local jurisdictions who say this is going to be nothing but a headache for us. This is friction. And you think that these people aren't aware that our property taxes are high? These people are property taxpayers too. They don't have any interest in lying about increasing property taxes, as has been suggested here on this floor, which is ridiculous. And they don't have any interest in raising them either. This is government and local government officials. You know, we don't need to babysit our counties. We don't need to sit here in Lincoln and give them directives and new rules and new little stickers that they need to put on their chart, babysitting them and telling them how to do their jobs. It's not respectful. What we need to do is trust the voters to elect their

representatives and then trust those representatives and administrators to run their own field. You think they don't want to reduce property taxes? You don't think they're doing everything they can to do that? Because if they care about being elected, they know that that's what they're going to have to do. And we can do all kinds of stuff here in the Legislature, even though we don't collect property taxes again as Senator DeBoer made the point, which is important, that we're doing so much to reduce property taxes, let's give ourselves a pat on the back. We're doing so much. But people of Nebraska aren't really seeing an impact and they are not going to see a greater impact if we pass this bill. This is a bad bill. It's big government, not small government. It's state control. It's not local control, and it's not lowering taxes. It's increasing the cost of doing business to our counties and who's going to foot that bill in the end? Who's going to end up paying for all these postcards and printing? And a lot of these counties, they're going to have to end up renting the halls so that they can have these public hearings. A lot of counties would have to rent a meeting room. And also logistically, how does this work for school districts, for example, that cross county boundaries? Do they have to get multiple hearings in each county? What is the cost of that? And finally, let's not just talk about the financial cost, but the time and the work and the mental understanding that these local officials have to put into complying with these new laws that are coming down on them from the state when they're already trying to-- to comply with all of our other laws and all of the other federal laws that they have to go by. We're really asking a lot of these people. And the postcard piece is just the thing that I think is a bridge too far and it's just too much bureaucracy. It is not small government. It's creating friction for local governments and it's us getting in to a place that's really not our business.

**HILGERS:** One minute.

**HUNT:** And finally, yes, people do read the newspaper. People do read the newspaper. And all of us and all Nebraskans should be supporting our local journalists whether you want to subscribe to read a print edition or you want to subscribe to read an online edition. I actually worked for several years at the Washington County Enterprise, which is the paper of record in Senator Hansen's district, and it was one of the best jobs I ever had. And another way you can support journalists and local journalism is by not denigrating the important work they do, not saying the news is fake, not saying that people are biased or they have something against you. Support journalists or you wouldn't know what's going on. It's really important. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Hunt. Senator Arch, you're recognized.

**ARCH:** Thank you, Mr. Speaker. I just wanted to conclude some of the remarks I started earlier this morning regarding my perspective on this. And-- and I think it's very clear that the struggle that we have here in the Legislature in addressing property tax relief, and the issue is-- is not one-dimensional. It is two-dimensional. One is that we would provide property tax relief, as we are doing in our-- in the various mechanisms that we have up to now, \$700 million, but that other is that expense side. And-- and I'm-- I'm confident that the intent of this bill is to-- is to provide choices to the taxpayer if they understand. And the transparency then that is being required of this is part of that equation of property tax relief. But one of the precautions that I-- that I have in this is-- is something that I learned early in my legislative career regarding the bills that are passed here and-- and how they impact counties, in particular school districts and-- and the expenses. And so as-- early-- as I say, early in my career, I had an opportunity to understand Sarpy County and some of the mandates that had been passed down over the years. And-- and so I was given a list and just a couple of them here of-- of-- and this was from 2018, as I say, early in my career, where the Register of Deeds collects all the work required to file, collect land-- and file land records in the county and required to send over \$2.4 million of the documentary stamp tax collected to the state. We are required to take prisoners without pay. We are required to lease space at no cost to some state departments. All of these things add up and to the-- to the County of Sarpy, it adds up over time to about \$8 million from the last numbers that I've seen per year that we-- that we provide-- Sarpy County provides to the state. That being said, it's all incremental. It's a little bit at a time. And-- and again, my early remarks, as if there is a way for the state to participate in the cost here, I think that would be appropriate. I am going to support this bill on General. And-- and I've had some conversations with Senator Hansen, and I know that he's-- he's working on some of the issues that I raised this morning and I look forward to seeing an amendment then on Select and hopefully address most, if not all, of these issues. Thank you.

**HILGERS:** Thanks, Senator Arch. Senator Briese, you're recognized.

**BRIESE:** Thank you, Mr. President. Good afternoon, colleagues. Wanted to make a few comments on LB644 and AM854, AM755. AM755 is about transparency and transparency can yield accountability and that's a good thing. A couple of years ago, a good friend and supporter of mine, he's a cattleman, community leader, family used to be in banking back home, he called me up and he was angry about his property tax

bills. And he was telling me, relating to me the anger that he feels out in the community and in the countryside over property taxes. Well, I've been on the Revenue Committee, I think, two and a half, three years now, and we get the opportunity there to hear a lot of bills directed towards property tax relief. And we hear from everyday Nebraskans on a regular basis in that committee. And I would submit to you that a recurring theme at those hearings is one of anger. Nebraskans are angry about their property tax bills, they're angry about our unreasonable and unsustainable overreliance on property taxes to fund local government, and they're angry about our inability to do something about it. And some day that anger is going to manifest itself on the ballot in a way that we can't handle, that the state can't handle. And we need to be cognizant of that anger. We need to respect that anger. In the next couple of weeks, we'll have an opportunity to talk about several bills directed towards property tax relief. And respecting that anger means we can't just sit back and say no to every proposal that comes along directed towards protecting our property taxpayers. And respecting that anger means we have to sit back and sometimes accept things that aren't quite perfect. We need to work toward solutions. So we're going to have an opportunity today, and we're going to have an opportunity the next couple of weeks to send a message to our taxpayers and that message needs to be that we do hear you, we do understand your plight, and we want to do something about it. And so today, we have LB644, amended by a couple of amendments there. And in my opinion, it's not very intrusive and I think it can be very effective. And I think really the postcard is one of my favorite things about this bill. It can be an eyeopener for our taxpayers. A nice postcard telling every taxpayer how much of an increase is coming is going to encourage public engagement in the process and public engagement is a good thing. And personally I'd still like to see ads put in the local papers because, yes, I do think a lot of folks like myself do read the local papers and I think ads, the notices there-- I say ads, I mean notices, but notices there can be effective. And I think if it was up to me they'd still be in place there. As far as Senator Halloran's amendment, the hearing on that bill was an eyeopener. We heard of people just get-- just plain getting jacked around by local government. You win an appeal of your valuation and you shouldn't have to bankroll the local government. It's your money. You should be able to get your money back. And if you can't, I think some interest is appropriate to encourage and incentivize the county to get you paid back. So even though I'm not in complete agreement with every aspect of LB644 and AM755, I do support AM854 and AM755, and I encourage your support also. Thank you, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** Thank you, Senator Briese. Senator McCollister.

**McCOLLISTER:** Thank you, Mr. President. Good afternoon, colleagues. I rise in support of LB644 and the two amendments. I've been here six years. I'm on my seventh legislative session and this is a good bill. It's something that is quite necessary. As Senator Stinner mentioned this morning, as long as my class has been in the Legislature, we've been pretty responsible in our budgets, 2, 3 percent raises, which is essentially the cost of living. In my first session, I ended up getting a bill passed, LB851, in 2016. And the purpose of that bill was to put some quasi-governmental bodies, along with the fair board, cemetery groups, on the state website there-- which would show the checkbook for those units. Transparency and accountability is what we need to provide and that bill did that and I think that's been important to me for my entire senate career. The two school systems in Omaha have what they call budget override authority, and they have actually passed budget overrides, both Millard and Westside. In fact, Westside has passed a budget override two or three times. So we provide a mechanism for those school districts and to get an override from-- from the voters. They have to receive approval from the voters. Megan Hunt, I think, Senator Hunt, indicated that we're creating friction or hurdle for governments to-- to overcome and that's not a bad thing. If we want to keep increasing taxes, and we have certainly seen that in Nebraska, I think we need to provide a little friction to make it a little more difficult to increase those levies and keep bilking the taxpayers-- taxpayers for some unreasonable amounts of tax. Senator Linehan is absolutely right. Taxes are too high in Nebraska, particularly property taxes and I think passing this bill is a good step forward. Thank you, Mr. President.

**FOLEY:** Thank you, Senator McCollister. Senator Wayne.

**WAYNE:** Thank you, Mr. President. I guess I'm still trying to figure out what all the controversy is about this bill and the underlying bills. I know when we were at-- when I was on the school board, we had TERC decisions that came down that always affected our budget. And I can't imagine a homeowner or a business having that problem. But I know Senator Linehan is in the queue after me and I'll yield the remainder of my time to Senator Linehan if she wants it.

**FOLEY:** Thank you, Senator Wayne. Senator Linehan, you've been yielded 4:20.

**LINEHAN:** Thank you, and thank you, Senator Wayne. So I just handed-- I did over the noonhour, and I don't-- I know that we have a lot of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

officials that volunteer their time all over the state for their communities. And I-- I realize that being on the school board or county board member is hard work. I get that. My mother, who passed away almost three years ago now at 97 years old, spent the last 20-some years of her life as a volunteer city clerk for Crab Orchard. So I get that-- that there are people out there and I don't-- I don't want to offend any of them. I also understand and I just talked to Senator McCollister about this, my mom was part of a generation, the Greatest Generation of many of your parents or grandparents were, that they were just very common sense, very direct, give me the facts, straight. I just told Senator McCollister I was a big admirer of his father, John McCollister, who was a Congressman from Omaha. And if John McCollister is going to raise your taxes, he would tell you, I'm going to raise your taxes and this is why. And-- and that's-- that's the way this should be going, and that's all we're asking for here. I'm sure there are reasons that taxes should go up, but let's just tell people what's going on. You have, hopefully the pages have gotten it all the way around, a headline in a paper for November 8, 2020. How much will you pay in property taxes next year? Figure it out with your calculator. So this is about Lancaster County. So I've got the whole story here, none-- well, actually, one of them did raise their levy. Most of them left-- the largest local property taxing authority, Lincoln Public Schools lowered its levy slightly while the city of Lincoln, Lancaster County, Southeast Community College each held their rates level from the prior year among the pandemic and a slight uptick in commercial values. So they all have their levies level, but even with the tax credit increase, you'll see on the thing I handed out, they're going to-- we provided through the tax credit, the Legislature, \$206 to help this homeowner because property taxes went up, though, because valuations went up. What they actually saved is 39 cents. So we hand out \$206 for good purposes of state revenue, but they only see a 39-cent decrease in their property taxes. Now, can you understand-- I mean, that's pretty clear why they're frustrated. I have-- I have great admiration for the press and newspapers. I think I-- subscriptions to five or six newspapers. But if you look, and I just had staff do this over the noonhour, here's the headlines from-- city, not likely. This is January 13, 2021.

**FOLEY:** One minute.

**LINEHAN:** City Hall. This is Lincoln. Not likely to raise levy, but taxes could rise. Lincoln property values jump. First paragraph: The city of Lincoln's budget clunkers-- crunchers anticipate no changes to the tax levy, though they project overall property values in the city will increase 5 percent this year, they told the county. So that could

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

mean-- could mean that property taxes for valuations are going to go up. But again, they're not raising the levy. Joe Dejka story from September 4, 2019: Some property owners will pay higher taxes to Millard School despite a two point site-- 2.5-cent drop in total levy because in reality in Millard, their valuations went up 6.7 percent. Westside, slightly lowers levy, but property tax bills may not go down. No, they won't go down because their property values went--

**FOLEY:** That's time, Senator.

**LINEHAN:** --up almost 7 percent.

**FOLEY:** That's time.

**LINEHAN:** Thank you.

**FOLEY:** Thank you, Senator Linehan. Senator Vargas.

**VARGAS:** Thank you very much. Senator Hansen, I wonder if you'd yield to a question-- Ben Hansen.

**FOLEY:** Senator Ben Hansen, would you yield, please?

**B. HANSEN:** Yes.

**VARGAS:** I want to try to continue on the conversation, so I do look forward to the Select File. And I know there's a couple of things that you'll be working on you've already talked about. One of the ones I mentioned to you off the mike was, you know, as a former school board member, we used to have people come and sometimes we had some long nights. Senator Wayne remembers this. We had some long nights and we really have capped sometimes the amount of speaking public comment time we have. But when we had more people that came, we gave them more time. And so, but that decision was something that we took on as a school board, not something that was taken on or dictated. So I know one thing I think you said you were going to change and I want to correct it is, is not-- not being able to put a limit on the amount, not on the time that somebody could speak, but just a limit on how much time is spent on the hearing overall. This way we're not really tying the hands of the municipalities or the school boards or what have you, is that correct?

**B. HANSEN:** Yes.

**VARGAS:** OK, I appreciate that. Another thing that-- that I noticed. So Kansas passed this bill, correct?

**B. HANSEN:** Yes.

**VARGAS:** Yes. So in Kansas' bill, one of the workarounds for cost on the postcard is they created an opt-in system for people to be able to receive an electronic copy of this notification, thus providing some way of cost savings from the postcards, which could add up, obviously. I noticed that's not in here. Is that something you'd be open to, some language that says that they can-- the counties can also inform property owners electronically if the property owners opt in to receiving those notifications?

**B. HANSEN:** That's something I can look at between-- it's a little bit new, not new, but like optically with the-- how the bill works, that's something I can look at, yeah.

**VARGAS:** Yeah. I think the way-- I was trying to look at some of the information from Kansas. The reason they did that is because if they were able to get large droves of people to opt into this database, then the information can be sent to them and it would be able to offset the cost. And again, it's opt in from the taxpayer to do that. And so I think it's one way to-- to get around-- to get around this a little bit. Given that this would be starting in 2022, is there any conversations regarding-- because there are penalties if they don't send out the postcards. And so, I don't know if you thought about in the first year sort of, not delaying the implementation, but delaying some of the consequences if you're not sending the postcards out in time for the first year, starting 2022.

**B. HANSEN:** Yeah, I have not thought of that, but that's something I can think about between now and Select File, yeah.

**VARGAS:** OK, OK. You know, the last thing and I don't know if this is something you thought about. Kansas to my understanding-- actually the state General Fund covered the expenditure cost for the postcards. And so they-- they basically put it on the counties to keep track of the expenditures and then send those expenditures to their equivalent of some sort of a treasure-- treasurer. And-- and then they had to certify those so that it would be covered by the state. And it's, you know, I don't know how much it's going to be, but it is going to be a cost to the municipalities. And it seemed that that's what one of the things that got a really broad bipartisan group of people on that bill. I think nearly most of the Legislature in Kansas, on both houses, passed this. It was 90 percent-plus from what I remember. But I-- I was wondering if that's something you'd be open to, because I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

think there's-- there's a question from some of the counties on whether or not-- how much this might be cost, I don't know.

**FOLEY:** One minute.

**B. HANSEN:** Yeah, I think that was a hill I don't think we could have-- we couldn't meet on for some of the reasons that were explained before, especially by Senator Linehan, she explained, because local entities are-- they're the ones doing the taxing.

**VARGAS:** Yeah.

**B. HANSEN:** This is a local issue. And then we start getting the state involved with some of the stuff. And then that-- that was-- that was some of the issues I think we both were having a hard time kind of coming together on.

**VARGAS:** OK, well, I appreciate it. On those other items, I look forward to working on Select File on those. I think they'll make the bill better. I don't necessarily feel like it's a-- like I love this bill, but I also don't see the harm necessarily right now with the notification piece, the transparency. I have a couple other bills I passed with transparency in the past, or even have right now, having to do with government subentities. And so, but I think these things will make them better. Senator DeBoer has mentioned some things that would make it better as well on the mike. And so I appreciate you working on us with some of those things between now and Select. So thank you very much.

**FOLEY:** Thank you, Senator Vargas. Senator Groene.

**GROENE:** Understand I was last in the queue, I'll make this short. I just wanted to make a comment about the elected officials. I haven't heard any of them complain about this. So I know we have a lot of people talk about sympathy, how much they have to work and how much extra they would have to do. I don't think any of them, our public servants mind. Look at us. We make \$12,000 a year. How many times did we have to show up in the summer for a hearing? How many-- I just seen the Appropriations Committee-- Committee meeting over noon. We do it because we're public servants. I don't think they're concerned, the county commissioners, about another meeting that they have to attend or the school board president or the-- I think they're public servants and they'll show up. So being sympathetic to them and I don't probably think that's a compliment to them. They'll step up. They'll do it just like we do it. It's one more meeting and I could go into pay and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

benefits of what some of them make versus, you know, the ones that volunteer like school boards. So that's not a problem. I want to make a comment about my Wheatland Industries too. This entity did not ask for TIF. The local community asked them if they could TIF it and they did it by the book. They didn't take their taxes back. They paid their full taxes back when the thing was \$16 million. The community of Madrid took all of the funds, fixed their streets, fixed their sewers up, that is how TIF is supposed to work. Most corporations want that money back to themselves. This is a good business partner, a good company, and they have been penalized on their property taxes, which is completely unfair. As far as newspapers, if you remember, my LB148 last year was the one that said "you shall" post it in a newspaper because some of them were going-- doing it on their websites and stuff. So yes, the Press Association liked me last year, I think they still do. But anyway, because I am a free thumb of the press, as you've seen in LB88, I really respect the press in what it does. So anyway, I'm in full support of all AM854, AM755, AM644, and whatever amendment Senator Hansen works out between here and Select. So let's-- let's do the right thing. They're not complaining. Folks aren't complaining about their property taxes, what they pay. They just want to pay the correct amount and they wanted to be treated fairly as far as AM854. And there's nothing ever wrong in a democracy with accountability and transparency. And that's what Senator Ben Hansen's bill does. So thank you, and I'll end it there.

**FOLEY:** Thank you, Senator Groene. Senator Hunt, you're recognized, your third opportunity.

**HUNT:** Thank you, Mr. Lieutenant Governor. There's nothing wrong in government with accountability and transparency, but just because we say that's what that is doesn't make it so. Just because we say this lowers taxes doesn't mean that in actuality the outcome will be that taxes are lowered. Just because we say we have to do something to solve the problem doesn't mean that when we do that something, the problem will be solved. We all want to help solve the problem, but that's why we have to be so critical and skeptical and we have to challenge the solutions that come up and we have to continue to work on them to make them work for everybody who's going to be affected. I understand that Senator Hansen has the votes on this round to pass this bill through General, which is why the League of Municipalities, the nat-- the Nebraska Association of County Officials, the school boards, the community colleges, that's why all of these organizations that are going to be affected have met with him in person so many times to try to make this unfunded mandate workable. Colleagues, what makes us think that we in the Legislature know better than local

political subdivisions and local elected officials on this? What makes us think that we know better? We are almost the farthest removed from what it is that they're going through and we weren't elected to run those boards. Yet, we're here in Lincoln meddling and micromanaging what they're going to do to do their jobs. And I don't believe in that. I'm also really skeptical when people say that they want to reduce government and they run for office on this whole platform of government's too big and we got to do conservative things, but then they come in here and they introduce expensive solutions that don't have anything to do with that. And I get really skeptical when I see that this is potentially a pattern of-- of behavior. For example, Senator Hansen introduced a bill in our Government Committee to put a watermark on our ballots. And, you know, that's not what we're talking about right now, but this is another bill that (A) solves a nonexistent problem and (B) ends up costing a ton more money to put that watermark on the ballots would have cost the Secretary of State said, \$1.4 million a year per election. So, again, we're trying to solve a problem that really the solution belongs at the local level, not here in the Legislature particularly. And also, it doesn't solve the problem if we pass this bill because it just puts more costs on those localities and those political subdivisions. And who do they pass that cost along to? How much money could we save if we went through our statutes and we remove the red tape and bureaucracy that the state has put on local governments just to be compliant with arbitrary laws that were passed by term-limited senators who want to say that they did something that mattered, who want to pat themselves on the back and say that they did something to bring property tax relief to people? And when we-- when we pass things like this, it makes us look good. It makes us look like we did something. And it makes local school boards, for example, look bad. And I have to ask if that isn't deliberate, if that's not something that people knowingly realize is happening. It doesn't matter what you say will happen. It doesn't matter if you want transparency. We all have our little things that we really want. What matters is what actually happens as a consequence of the legislation that we pass and how it actually affects taxpayers and also how it actually affects the process of good governance which is worth protecting at the local level for Nebraska localities. I trust local elected officials to handle their business. I don't think that they need us to babysit them and make them do this when in Nebraska we are already very mindful of taxation and spending. I will be interested to see--

**FOLEY:** One minute.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**HUNT:** --an amendment on Select File to address the concerns of the different organizations that have had a problem with this bill, for example, the League, NACO, the school boards, the community colleges. I know that they've suggested some pretty workable things, for example, talking about not just the cost of mailing the postcards, but the cost of the staff time and the materials and the postage. I know that they've talked about other various different changes to the amendment, such as saying that the postcard shall be mailed at least seven business days before the joint public hearing and not seven calendar days. These are just things that need to be changed to make the bill workable, to make this unfunded mandate workable if we do end up passing this. So, conservatives, I would ask you to question if this is the way we want to expand government, if this is really in our purview, and if this does anything to actually reduce taxes for your constituents, which I don't think it does. It just makes us look good--

**FOLEY:** That's time.

**HUNT:** --and it makes localities look bad. Thank you.

**FOLEY:** Thank you, Senator Hunt. Senator Halloran, you're recognized to close on AM854. He waives closing. The question before the body is the adoption of AM854. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 35 ayes, 1 nay on the adoption of Senator Halloran's amendment.

**FOLEY:** AM854 has been adopted. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, Senator Wayne would move to amend the committee amendments with FA17.

**FOLEY:** Senator Wayne, you're recognized to open on FA17.

**WAYNE:** Thank you, Mr. President. This amendment is really simple. It simply says that all counties shall create a user fee for anybody who walks into a county building at 25 cents. It'll pay for Senator Hansen's bill. We have nothing to worry about going forward. And with that, I withdraw my amendment.

**FOLEY:** Thank you, Senator Wayne. Further discussion on LB644 and the pending Revenue Committee amendment. I see no further discussion. Senator Linehan, you're recognized close on the-- she waives closing on AM755. The question before the body is the adoption of Revenue

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

Committee amendment. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, please.

**ASSISTANT CLERK:** 36 ayes, 1 nay on the adoption of the committee amendments.

**FOLEY:** AM755, committee amendment, has been adopted. Any further discussion on the bill as amended? Senator Ben Hansen, you're recognized to close on the advance of the bill.

**B. HANSEN:** Thank you, Mr. President. I do appreciate all the conversation, actually been having it. Brought to light some questions and concerns that a lot of people had and some stuff that we can work on, on Select File like I mentioned before. In my opinion, it is vital we pass LB644 to allow for the proper communication between the taxing entities and the taxpayer. A simple thing such as a postcard and a meeting with elected officials can go a long way with the public. Some of you who have been involved in local government such as myself, notice that hardly anyone shows up to your annual budget hearing. Does that mean we stop trying to inform the public or encouraging them to attend and learn about the process? I believe this bill bridges that divide we tend to have in a lack of participation by the public and how we tax our citizens. With information comes power. And if we truly want the people to control their taxpaying destiny, they need to be well-informed. Albert Einstein once said, intelligence is not the ability to store information, but to know where to find it. And this is what we're trying to encourage. Give people an idea where to find the information, how to discuss it with their elected officials. And I'm trying to work with all stakeholders and we'll be introducing some amendments on Select File, such as the specific ones even Senator Hunt mentioned earlier, about staff time from the county, about the calendar days along with others. And also Senator DeBoer and I were talking off the mike quite a bit, along with Senator Arch, about some of their concerns. And I'm going to be working diligently with them as well to see if we can make this bill better and try to address their concerns as well. So with that, I encourage everybody to vote green. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Ben Hansen. Members, you just heard the debate on LB644. The question before the body is the advance of the bill. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 36 ayes, 1 nay on the advancement of the bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** LB644 advances. Proceeding now to General File, 2021 senator priority bill, LB307. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, LB307 introduced by Senator Pansing Brooks is a bill for an act relating to juveniles. Change provisions relating to waivers of counsel; requires appointment of counsel, provides a duty for the Supreme Court of Nebraska; harmonize provisions; and repeals the original section. The bill was read for the first time on January 12 of this year and referred to the Judiciary Committee. That committee placed the bill on file with committee amendments.

**FOLEY:** Thank you, Mr. Clerk. Senator Pansing Brooks, you're recognized to open on LB307.

**PANSING BROOKS:** Thank you, Mr. Lieutenant Governor. Good afternoon, colleagues. Well, I'm-- I'm really pleased to be here with this bill today. I hope you'll all listen. This is the result of a large collaboration with judges who have opposed me in the past, and I feel really proud of this work that I've done to help juveniles. LB307 sets court rules for juvenile defense. It establishes that if a court accepts a juvenile's waiver of counsel, the court or-- the court order and any probation order shall affirmatively show that the juvenile cannot be removed from the home or detained outside the home by the court on the adjudicated petition. So what this is about is if a child is going to be placed out of the home or in detention, they have to have an attorney before they can make a plea. If-- if they're not going to-- if they're not going to be placed outside the home, then there's no problem. They don't have to have an attorney. This exact same process occurs in adult court. Adults are not given attorneys if there will be no jail time sought in any proceeding. Additionally, LB307 provides that on or before July 1, 2022, the Supreme Court shall provide by court rule a process to ensure that juveniles are provided the opportunity to consult with counsel to assist the juvenile in making the decision to waive counsel. I know many of you are aware that I've worked for several years to ensure that Nebraska fills its constitutional responsibility to provide the right to counsel for youth in our juvenile justice system prior to a guilty plea. I previously brought legislation to require that counsel be provided at the time of the petition. But I received a bunch of pushback from a number of rural judges. For the last several years, we have been at an impasse. However, prior to this session we had a major breakthrough on our differences. Judge Larry Gendler from Sarpy County brought rural judges together to offer feedback and discuss how we might be able to proceed with a new approach. One of those judges was Senator Groene's

rural judge, Judge Kent Turnbull from Nebraska's 11th District in North Platte. Judge Turnbull has been a leading voice against my previous legislation. The end result of those discussions is LB307, the bill before you today, a bill that was written-- written by Judge Turnbull with significant contributions also from Judge Gendler. It's-- it-- it isn't as far as I wanted to go, but it's-- it's really good. What we discovered during this process was that we weren't really far apart. We all share the same desire to ensure that kids who need counsel have it. LB307 takes a different approach from my previous efforts to the problem of counsel for juveniles, yet it still achieves much of my intent. It is a happy medium. LB307 creates provisions for waiver of counsel for juveniles. It establishes that the court shall not accept a juvenile's waiver of the right to counsel unless it can be affirmatively shown that a juvenile will not be removed from the home or detained outside the home by the court on a specified-- a specific adjudicated petition. Should additional issues arise, the county attorneys may always file a new petition requesting out-of-home placement and then the juvenile can request an attorney after previously waiving on the prior petition. LB307 applies across the state. However, the three largest counties are already providing attorneys in these cases 100 percent of the time at the time of the court petition. So LB307 doesn't really change how they are statutorily required to handle these cases. LB307 allows for appointment of counsel in out-of-home placement cases, or those cases where the consequences for a child can be most severe being placed outside the home. This is a point that the judges and I realized we all agreed on. Additionally, LB307 provides that on or before July 2022 the Supreme Court shall provide by court rule a process to ensure that juveniles are provided with the opportunity to consult with counsel, to assist the counsel in making the decision to waive-- waive counsel. The juvenile, in-- to-- to consult with the counsel to assist the juvenile in making the decision to waive counsel. The courts are already able to set rules, but this provision will ensure a specific rule is provided for appointment of counsel so the courts have clarity across the state. The bill is important because the right to counsel is one of the most basic rights of our legal system. More than 50 years ago, the United States Supreme Court extended the right to counsel for juveniles in *In re Gault*. The court stated that the youth needed the guiding, quote, the guiding hand of counsel to navigate the legal system, unquote. Writing for the majority, Justice Fortas famously wrote: Under our Constitution, the condition of being a boy does not justify a kangaroo court, unquote. Despite this ruling, there remains a wide gap in juvenile access to counsel across our state. In fact, it is known that kids in Nebraska often get justice by geography

due to the lack of robust access to counsel. Admittedly, part of the lack of access has been a lack of juvenile lawyers, but LB307 will not cause appointment of counsel in every case, just those where the county attorney is seeking out-of-home placement. This is especially problematic because under the juvenile justice system, a court has the entire panoply of dispositional remedies available, including detention and/or out-of-home placement for any matter, any matter. In this way, the juvenile court system is different than the adult court system. A child may be taken out of their home for something even as insignificant as a minor in possession if the facts surrounding that child's case so warrant. That has happened because the child got an MIP, pled guilty, then ran away from home without any warnings from the attorney and also skipped school. So by the time the child got back, the judge took the guilty plea and said, you're uncontrollable and we're going to take you outside the home. And this child never had any representation from an attorney. It is also very important to note that if the charge is small enough, the county attorney has the discretion to refer the case to diversion without going to the court at all. Such a decision is far less costly to the counties. In 2008, the Legislature recognized the Nebraska's juvenile indigent defense system was in need of serious attention commissioned a \$250,000 study of the system. That \$1.4 million study used assessment watch procedures in court. They found that in some parts of the state, 60 to 75 percent of youth waived their right to counsel and that youth are encouraged to do so by a combination of individual and systemic factors. That is why I brought LB307 because they do not even begin to have a grasp of our legal system and/or any of the rights that they have, because, of course, colleagues, they are kids. Senator Lathrop will be introducing AM273, but I wanted to go ahead and provide a brief explanation of what the amendment does and why the committee advanced it. LB307 originally had verbiage that provides that the county attorney would be part of the process in determining whether out-of-home placement was an option on the table in these cases and therefore whether counsel was necessary. However, the county attorney said they did not want to be part of the process. They told me in private and at the hearing, and I have the hearing language here if anybody would like to see it, they testified at the hearing that they were opposing the bill because they did not want to sign a waiver saying they would not seek out-of-home placement. So I brought forth AM273, which you will soon see, and the Judiciary Committee advanced it with the bill. I want to thank Judge Turnbull, Judge Gendler and all child advocates who have worked to bring about this compromise bill. Both judges have met with senators and others multiple times. They're willing to talk to any one of you who would like to ask

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

questions. It isn't fair to only talk to the county attorneys. You must also speak to the judges who all were county attorneys prior to their position as judges. And if you have any questions, as Senator Hilgers and others have-- know well--

**FOLEY:** One minute.

**PANSING BROOKS:** --I know that they will feel as relieved as I do to have reached an agreement. Judge Turnbull even teased me and after I profusely thanked him, he expressed his own relief that hopefully we can finally put this behind us. He likened my efforts to a dog with a bone and I've been given a new rock moniker, Tenacious P. I am extremely happy, grateful and proud that we could work together to resolve our differences and bring forth a well-tailored bill. I ask you to vote green on LB307 and AM273. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Pansing Brooks. As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Lathrop, you're recognized to open on AM273.

**LATHROP:** Thank you, Mr. President. LB307 was heard by the Judiciary Committee on January 28, 2021. The committee voted to amend LB307 with AM273 on a 7-0 vote with one member present, not voting. The committee voted to advance LB307 on a 6-0 vote, with two members present and not voting. AM273 replaces the original bill, but only makes one change. In the original bill, the court could not accept a juvenile's waiver of the right to counsel unless the prosecutor waives out-of-home placement of the juvenile. In the amendment, this provision is removed. Under the amended version, if a court decides to accept a waiver of a juvenile's right to counsel, the court would no longer have the authority to enter an order to remove or place a juvenile in an out-of-home placement. That's the amendment. I would encourage your support on AM273 as well as LB307. Thank you.

**FOLEY:** Thank you, Senator Lathrop. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, amendment to the committee amendments, AM882 from Senator Flood. Senator Flood, I have a note you wish to withdraw.

**FLOOD:** Yes.

**FOLEY:** Debate is now open on LB307 and the pending Judiciary Committee amendment. Senator Flood.

**FLOOD:** Thank you, Mr. President, and members. This is an issue that I haven't been involved in before, but I do have some folks in my district that are concerned about our juvenile court system. I want to start by saying I think Senator Pansing Brooks has invested a lot of her legislative career and time in an issue that is very important to young people and especially the juveniles that are in our system. I do think that if you are going to be placed out of the home or that you are going to a juvenile detention center, that you should have the right to counsel. And I know that's how it's done in my district. I'm sure that there are some judicial districts in the state where they lack the access to lawyers or juvenile court lawyers. I can't imagine being placed outside of my home as a 14-year-old or much less in a detention center and not having someone to explain to you and offer advice about the process that you're going through. And so to that end, I don't oppose what Senator Pansing Brooks is doing. What I have done today is I've shared with Senator Pansing Brooks and others, the concerns of folks in my district, law enforcement, prosecutors, judges. I haven't had a chance to talk to juvenile court participants. I am somewhat familiar with the juvenile court. I don't spend a lot of time there. I certainly respect what they do. And what I would say is over the summer, Senator Pansing Brooks has committed that she wants to hear these concerns from my district. She wants to understand what the concerns are. A lot of the concerns have nothing to do with this bill. They have to do with the inability to place someone in a very tough situation in a detention center or a treatment center when we lack beds, when you're under the age of 13. So we had a situation about two months ago or less than two months ago where a 12-year-old brutally stabbed another 12-year-old and there is no detention center for a 12-year-old. And I'm not saying that there should be, but I'm saying that when you have a specific public safety situation, we have to remember that there are-- there are certain circumstances where we have to have a plan. And I don't know that the plan has to be a jail cell. I think the plan should be the right treatment or remedy for the juvenile's public safety, for their personal safety, for the safety of others. We have situations where sometimes you have the child, the juvenile, assaulting their parents and then the police come, they investigate, and because of our current system, that same offender can be placed back with the parents that he or she assaulted. What I'm asking is that over the summer we hear from people in law enforcement, from county attorneys, from judges that may not agree with that strict prohibition on use of detention or out-of-home placement facilities for younger people under the age of 13. No one likes to talk about it. We don't want to think about it, but there are young people that-- that act out in such a way that public safety is threatened and we

have to have a plan. With that, I think Senator Pansing Brooks and I agree that that is the-- I can't find her here, that that's the most important part of this. I am ultimately going to support what the Judiciary Committee put forward. I'm going to support LB307, and I'm going to work with the members of the Judiciary Committee and Senator Pansing Brooks so that we feel heard. There's a lot of people in this process, I think, that have made a lot of progress over the last five years. There are some people out there that still have questions, concerns. If it were me and I was a county attorney, I'd want the right to object if they were not going to appoint counsel. If I knew I was going down a path where I wanted to place that juvenile in a detention center or in and out-of-home placement, I--

**FOLEY:** One minute.

**FLOOD:** --would want the right to object. Like, why wouldn't you? You'd want everybody to know in the courtroom that, hey, we're going down a path that this juvenile could go either way. This juvenile could remain in home or this juvenile, if they do something else, they're going to end up in a detention center and I would rather just tell the court that. So I have to understand why the county attorneys wouldn't want that power, because ultimately, I think it gives them some say. And the idea that they don't want say in the process is hard for me to understand. The prosecutor is the most valuable member of that entire team because they're the ones that decide whether to charge. They're the ones that ask the court what they want to do. Prosecutors hold most of the cards. I don't know why they wouldn't want the right to object if the court was considering not appointing counsel, if they foresaw an out-of-home placement. Thank you, Mr. President.

**FOLEY:** Thanks, Senator Flood. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor, and colleagues. I rise in support of AM273 and LB370, so obviously you know that I'm a big proponent of everybody having access to the courts and having access to a lawyer. I actually was privy to Senator Pansing Brooks graciously invited me to join some of those meetings with those rural judges right after my election, before I was sworn in, and so I was privy to some of the conversation that got to the point that we're at. And I-- I just want to say that Senator Pansing Brooks worked very hard to get to a compromise that works for everyone. And I think the thing that we're talking about here and what Senator Flood just addressed, I think is a good question. But the-- I think it should be clear, Senator Flood, that even without the statutory requirement that it not-- that the prosecutor not object, that doesn't mean they can't

raise those concerns in that hearing before the judge grants the waiver and issues the waiver. And so I think the prosecutors, if they have that concern and that may be the very reason that they ask that it be taken out of the statute, because if they raise an objection in that hearing then-- and the judge still issues it, I think that they maybe would have some recourse. But if they acquiesce and they agree, then I think they probably feel boxed in. So I think that-- that you'd have to ask them what the reasoning is but that it was my understanding that was in the original bill and taken out at the request of the prosecutors, which again, is a demonstration that this bill is a compromise between all of the stakeholders, advocates, judges, prosecutors to get to a bill that accomplishes the goal, which is to make sure that kids, when they come into the-- the criminal justice system, have adequate opportunity to be advised about their rights, advised about the ramifications, both short-term and long-term of entering a plea or contesting the charges. And what happens when the whole thing plays out and whether they comply with probation, there's a lot of ins and outs, I guess, as it were, to being a person in the criminal justice system. And kids do not understand that. And parents of kids in the criminal justice system do not understand that. People need advice. They need counsel and they need help. And this bill will create a structure that will allow when the most serious repercussions are being held over a kid's head, that they will have the opportunity to consult with somebody who understands the process, understands what's going to happen down the road if they don't follow through and if things don't go their way. So this is a good step in the right direction to make sure that-- that our justice system is more just and that it serves the rights and the needs of our system. And it will make everybody make the-- safer and better and it will get better outcomes for kids, which is ultimately what the purpose of the juvenile justice system is, in the best interest of the child. This is in the best interest of the child, in the best interests of children. So I ask for your green vote on AM273 and LB307. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Groene.

**GROENE:** Thank you, Mr. President. I stand in opposition to LB307. I appreciate Senator Pansing Brooks and I have been discussing it with other senators. Here we go again. An urban senator knows what's best for rural Nebraska. None of us-- if they had meetings with my judges, I was not invited. Was any rural senator invited? No. I've talked to my judge, he's a friend of mine. He said, I'm just tired of this. What we worked out is what we already do. Except, I asked him, is what we're doing now good? He said, yeah. This idea where we have to appoint attorneys or-- we do now. If any child is removed from the--

from the court, from the home, they-- an attorney is appointed. That is judiciary guidance that they get to do. I asked anybody to tell me of an instance where somebody was mistreated in juvenile because they had an MIP or a vagrancy or a-- or another one of the misdemeanors, that they were treated badly by the courts in rural Nebraska because they did not have an attorney. Now, some did, because you do have a right to an attorney. Read the statute prior to what is in LB307. The judge has to tell the parents, have to tell the child that they have the right to representation. But no, that isn't good enough. The trial attorneys associations want more money. They want more lawyers appointed. Here's what's wrong with rural Nebraska, what doesn't work for rural. We don't have those attorneys living out there. True story, which I went over last time this bill came up. In an adjacent county with 600 people, had a beer party raided, 15 kids got MIP. That little county don't have the money to pay for 15 lawyers because, see, the public defender can only represent one of them, which makes sense. You represent six of them and one of them wants to rat on the one that bought the beer to get off, he can't do that if the one same lawyer is representing them as a group, so he has to represent one. We don't have a problem in rural Nebraska, urban Nebraska. We don't have a problem. The system works. The system works. Egos of attorneys bother me sometimes. A parent is quite capable of deciding and went along with their child if they want an attorney or not. If we live in a world, in an America with all the statutes we write, criminal or civil law, that the average person can't understand, those statutes or the consequences of them, and we have to hire an attorney, we have too many attorneys. Is that where we're at? Let me tell you. Some parents decide a child standing in front of a judge and with a tear in their eye and mom crying is the strongest lesson they can get ever. But they want-- no, they don't want that kid in front of that judge. They want to rubber stamp them. They want a mass production. You hire attorney, the kid sits in a room, or he stays in school, doesn't even show up. Attorney goes up there, we made a deal. We made a deal. Rubber stamp it, bring the next one.

**FOLEY:** One minute.

**GROENE:** If you're in a court of law, you should stand in that courtroom. You should be in front of that judge. Children learn, as all human beings do, from experiences, bad and good. If a child is going to be removed from their home or for any purpose, a YRTC, there is an attorney involved. This is, we know better than you, rural Nebraska. I'm going to bring an amendment which two things the attorneys, the judges told Senator Pansing Brooks they needed. They need to make it statewide, get out of this dual, dual unequal justice

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

that kids in-- in urban counties have to have an attorney for even an MIP and this one, and also put the county attorneys back into it, which I'll go in later--

**FOLEY:** That's time.

**GROENE:** --after I drop my amendment. Thank you.

**FOLEY:** Thank you, Senator Groene. Senator Geist.

**GEIST:** Yes, Mr. President, thank you. And I do have some concerns with LB307 and AM273, actually not in its intent. Senator Pansing Brooks and I have the same goal. I just think we're going to get there in a different way. And I'll tell you my concerns. Hopefully, I can articulate this in an understandable way. My con-- I have and I understand the concerns about removing a juvenile from their home and detaining them or not detaining them. But there are some times in that-- that needs to be done. We, 100 percent agree, that whenever that is done, an attorney needs to be involved. In this bill, though, what I see are some unintended consequences. For one thing, it's not specific. It says nowhere in the bill specifically, the judge makes this call. Number two is the unintended consequence of this bill, and let me outline what I mean. It talks about what happens when a juvenile waives their right to counsel and it says they cannot be removed from their home or detained outside the home by the court. So if a juvenile decides they don't want counsel, then they remain in their home. They do not receive services. They do not-- they're not placed in an out-of-home placement. And there are times when that needs to be done. In this case, if a judge saw that a juvenile needed to be placed, he would have to overrule the juvenile's wishes, which is typically we like, the judge likes, the court likes to be able to grant the wishes of the person who's pleading. It's still there as an opportunity. It's just not optimal. Or the county attorney can also file an additional charge against the juvenile, which then forces an attorney on the juvenile. However, then that makes additional charges rack up on the juvenile. And my point is, what is best for this child? That's the same question that Senator Pansing Brooks is asking, is what is best for the child? And we just see that differently. I-- in these cases, I believe it's best for the child to have representation if they're going to be taken outside the home, and I would like the bill to spell that out. In these situations, an attorney will be given to a child. It would also probably be beneficial for those in rural Nebraska that have it specify, these are times it would not be beneficial, an MIP, a lower level crime. There are times when a juvenile does not need representation and I'll grant you that to my

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

rural friends. However, if you're taken outside your home, you need to have the advice of an attorney. And I think that's a worthy cause. I just think it needs to be spelled out in this bill exactly when a judge, if that's who we're going to give the authority to appoint,--

**FOLEY:** One minute.

**GEIST:** --then it needs to be specified in the bill. In this bill, it does not say a judge will appoint. It says what a judge will not do or cannot do if a juvenile's right to counsel is waived, but not in the positive. My other concern is juveniles catching on to this and understanding that they can waive counsel and stay home and not get services. I know that that is ascribing great manipulation to some juveniles, but I would submit after raising a few of them, that manipulation can be there. And over time, I fear the unintended consequence of--

**FOLEY:** That's time.

**GEIST:** I'm sorry, did you say time?

**FOLEY:** Yes, I did.

**GEIST:** OK.

**FOLEY:** Thank you, Senator Geist. Mr. Clerk.

**ASSISTANT CLERK:** Mr. President, Senator Groene would move to amend the committee amendments with AM898.

**FOLEY:** Senator Groene, you're recognized to open on your amendment.

**GROENE:** Thank you. If I can find the amendment. Excuse me. What it does, if you look at the amendment, it strikes the agreement that was made back in my freshman year down here and Senator Hughes's and Friesen's and we fought this back then when this attempt to take our rights away, the freedom of representation, know our freedom exists, to me unless you have a right to use that right or not to use that right. If you're forced, that's no longer a right. It's a mandate. We compromised and said, all right, counties over 150,000, if you want to do it, just take us out of it. We'll do what we've been doing, raising good kids, keeping kids out of jail, get them diversion and then the parents didn't have to hire a lawyer. An agreement was made. Senator Pansing Brooks was here. And then we probably made a mistake because there's a lot of bad stuff in that bill that happened. Senator Flood talked about addressing that. That happened because we made the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

agreement. We've kept our word. Urban attorneys don't like it. You dummies out there in rural Nebraska, you don't know what's best for your kids. So what this amendment says, if this bill gets adopted, what's good for rural Nebraska should be good for Omaha and Lincoln and Sarpy County. Why not? Think about this. We have statutes, which I have been told by some attorneys, probably if it got challenged, it would be unconstitutional. Inequality under the law. If you're a teenager in Lincoln, you get an attorney no matter what. In North Platte, you get to choose, you get freedom. Come to North Platte. Right now you have freedom yet. Families still have parental rights to decide if they want an attorney. For something like DWI, what's the idea of attorney? Come on, tell me, guys. Kid committed a crime. He knows he committed a crime, why do you have an attorney? Do you want to raise kids that you can get out of this? If you hire an attorney, we can get you out of it even though you did it. It's a real lesson in life for teaching teenagers, isn't it? Why else would you need an attorney? I'm trying to figure out why you would need that attorney. They're not going to send you to the State Pen. They're not going to send you to the electric chair. A judge knows what he's doing. So does that county attorney. If that child-- they're not out there-- I don't know if you know this, but we like kids in rural Nebraska. So does our county attorneys and so do our judges. They want to help these kids. They don't need some fresh-out-of-college, bottom-of-the-class attorney who can't get a job anywhere else, so he hangs around the courthouse looking for \$100 fee to represent some kid on a DWI. We take care of our kids. We do what's best for them. By the way, we don't have those attorneys out there, we don't have them. Attorneys we have are professionals. They do estate law. They do contract law. They do criminal law for the guy who's willing to pay a lot of money to get out of a DWI because he's going to lose his job, otherwise, if he doesn't have a driver's license. Those are the criminal attorneys we have. Murder cases. We do have murder out there. People don't get along once in a while. We don't have attorneys sitting around looking for a \$100 fee on a DWI for a minor. So where are we going to get those? Even if the county, which they're not supposed to, a middle-class family who gets an attorney has to have an attorney, they have to pay the bill, even though the court appointed him. But here's what they also have to do. They have to pay the mileage to bring one in from Sidney or Ogallala. They have to pay that, too, because, see, we don't have all those attorneys around there. So they got to pool them from a wide area. This bill is absolutely unnecessary, and in the second part of this amendment where I strike that and make everybody the same, where it makes everybody the same, treated the same across the state, because I don't understand, I've talked to Senator Pansing

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

Brooks. If this is good for rural Nebraska, why isn't it good for Omaha and Lincoln? Well, no, no, this isn't good enough. We're just looking after you, patting you on the head. We're going to do something for you, rural Nebraska, that you don't know what to do. The second part of this amendment says a waiver of the right to counsel shall be denied upon request of the county attorney, the city attorney, because right now, the way it's bill-- bill-- written in the amendment, committee amendment, AM273, says, "If the court accepts the juvenile's waiver of counsel, the court order and any probation order shall affirmatively show that the juvenile cannot be removed from the home or detained outside the home by the court on the adjudicated petition. This shall apply: (a) To any period between adjudication and disposition; (b) To any period of probation." So now we got a judge that's off the rail and they don't like removing any kid from a-- from a home. And the county attorney says, wait a second, we know something about this family. Can't send that girl back to that foster dad. You can't put them back in the home. And judge says, nope, I'm going to accept the waiver. Go away county attorney. This bill puts back in the common sense, which we're doing now. County attorney says, the prosecutor says this kid needs to be removed from the home. We know about this family. We know what's going on. Kid might have stole a candy bar, but they also know what's going on at home. And the kid got beat up, got bruises, but he stole a candy bar and the judge and the court-- and the county attorney says, no, we need to have a break here away from the family, not with this or the kid gets put on probation. It follows probation and the kid breaks probation. Don't go to school like he's supposed to, goes and does something stupid again. Right now, the judge can say, the probation officer can bring him to court and say he broke probation and the court-- and the judge said, you're going away. You're going to learn a lesson. You need some instruction. You need some break from your normal routine. No, not with this. Senator Geist talked on it. You have to-- the county now has to file another charge for another thing and another court appearance, another set of court fees, guys. Another set of court fees for that kid so that they can remove him from the home. Boy, this sounds like a money train for lawyers. I'm sorry if I don't trust trial attorneys. I seen where they gave their money during the last election and I know what they're after, more and more of this. So more and more fees, more and more costs to the public. You have a right to represent yourself. Supreme Court has said that, to appoint yourself as attorney. We're taking that away from the rural kids. We're taking away a best lesson they can get. Standing in front of the judge and the judge will give them a stern look and said, you're going the wrong way, boy. No, they can hide behind a lawyer now, not learning a lesson. Maybe even get

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

off if a deal is made. Hey, crime pays, guys. Get the right lawyer. Got off of that one, not going to show up in my record. This is a time in their lives where they need to be scared just a little bit. Now, that might hurt your feelings and empathy. I know empathy is a big thing nowadays. But example, experiences guides our life, but we don't want to have that, do we? We want to have a lawyer take care of everything for us and teach the kids young that and stick a bill to the parents. When they are good parents, good kids do stupid things, too, and good parents have good kids who get in trouble. To imply that those parents don't know how to make the right decision and make a decision with their child, what they want to do, is absolutely an attack on parental rights and the basic-- basic core--

**FOLEY:** One minute.

**GROENE:** --of what our government is based on the family unit. Did you say to end?

**FOLEY:** One minute.

**GROENE:** So I'm bringing up this amendment. And if you accept this amendment, I've told Senator Pansing Brooks, I'm home free. Fixes two things that need to be addressed. It's a good amendment. It's what the judges wanted. When she said she talked with the judges, these are the two things they said had to be in the bill. They are not in the amendment anymore. So let's tell the truth. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Groene. Continuing discussion. Senator Vargas.

**VARGAS:** Thank you very much, President. I rise in support of LB307 and AM273. I'm in opposition to AM898. Kind of get to that in a second. I wanted to come from two different perspectives here. One is, I do want to commend Senator Pansing Brooks for her work here in the past. She's been working on this bill for several years. It has been a difficult task to do this type of negotiation, and she should be commended for that. I say that also professionally as the co-chair of the Juvenile Detentions Alternative Initiative. I'm lucky to serve on that as the co-chair, along with Corey Steel from Probation, the Supreme Court. It has been a labor of love working with stakeholders from across the state on issues to try to reduce how we look at the way detention is utilized, because ultimately it's not the solution for every single problem. And it is something that we're going to continue to have to look at. And so I encourage if you have more questions about how we use detention in this-- in the state and in counties, we should have

that conversation. I'd be happy to have more senators join our collaborative. Senator Pansing Brooks is part of that collaborative as well as others in the past. We would welcome that. And I know that offer is probably going to be extended by Corey Steel as well. The last thing I'll also say is the issue that we're talking about here, LB307, not that I want to sort of debate with Senator Groene on this, but I just wanted to make it clear, at least my opinion here. Lawyers are here to help ensure that children's rights are protected, to make sure they're treated fairly and unbiased. Nobody's saying that parents are bad or good. I don't think that's something that we're saying or we don't take care of our own in one part or another. It's simply that there is a need to ensure that rights are protected and juveniles deserve that right. Lawyers are trying to work to limit children's exposure to the formal court system because data continually shows when they're exposed to the system, they're more likely to end up in our system long term. And we're trying to solve our corrections issues, not exacerbate it. And we're also trying to avoid detention, making sure children are not adjudicated for offenses they didn't commit. And finally, lawyers are trying to also help ensure children are in the safest places possible. I know there's information out here about restorative child welfare. We have been working on expanding alternatives to detention, which can happen without being detained, and so there's other work on that as well. So I just want that to be made clear. I support the underlying bill. We're continuing working. I encourage people to come work with us in this collaborative. I will yield the remainder of my time to Senator Pansing Brooks if she will have it.

**FOLEY:** Thank you, Senator Vargas. Senator Pansing Brooks, 2:15.

**PANSING BROOKS:** Thank you, Mr. Lieutenant Governor. Thank you, Senator Vargas. I just want to rise and state a couple of things. First off, LB307 does apply statewide. There's nothing in the bill that exempts any county from its provisions. However, because Nebraska Revised Statute 43-272 already requires appointment of counsel in the three largest counties at the time of the petition, counties with populations over 150,000, then LB307 is essentially a moot point for those counties. They're already going above and beyond on the requirements of LB307. Additionally, we have not had a hearing to change LB30-- to change Revised Statute 43-272. Sarpy, Douglas and Lancaster County have all been providing counsel at the time of the petition since at least 2016 and Douglas County much before that. Lancaster has reported a cost savings as a result of this due to the elimination of an extra court appearance that would occur if the child indicated they wanted counsel at the first court appearance. So not

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

only have we had a cost savings, there has been no request for a change to that law. If somebody wants to work--

**FOLEY:** One minute.

**PANSING BROOKS:** --to change that as in Senator Groene's amendment, then we can bring a bill next year, somebody can do that. But there's been no hearing on the removal of those sections. It works in urban areas. And I'm telling-- I'm telling that everybody can-- what we're doing here is saying that something will apply statewide. Rural has said from the beginning that they wanted to be separate and have a separate standard. So I went to the judges out in the rural part of the state and I got that language from senator-- or from Judge Turnbull and Judge Gendler, and I'm-- I think what they've written is very clear. If Senator Geist would like to work with me to clarify her concerns, I am happy to do so. But again, it's quite clear what they wanted. But I want to make sure everybody feels good about this. It is very clear that kids need attorneys if they are going to be put into detention. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Pansing Brooks. Senator Lathrop.

**LATHROP:** Thank you, Mr. President and colleagues. I am opposed to AM898. I do want to respond to some of the debate that's taken place and specifically some of the comments of Senator Groene. First of all, you should understand that the lawyers that do this kind of work, and I know a number of them, we actually-- Senator Wayne works in this area and I'm looking forward to his remarks. I haven't met anybody that works in juvenile court that doesn't do it, not for the money, not for the money, but because they believe they are making a difference in a young person's life. That the lawyers that do this kind of work, Senator Groene, aren't the trial lawyers, as you understand the trial lawyers. That's a different group. These are men and women who are committed to assisting juveniles through a rough patch as they approach adulthood. They're good people. They care about these children. And you should understand that they care about the constitutional protections that apply to you if you were charged in adult court. They want to ensure that children are treated fairly. Now, when would this apply? What are we talking about? Those circumstances where a young person might be taken out of the home. Hang on a minute. That's a big deal. That's a big deal. Think about a 14-year-old child that might be taken from the home. That person ought to have a lawyer. By the way, a lawyer that understands all of the options for that child and it's not about getting the child off. It's not about getting the child off. It's making sure that the best thing

that can happen for the child under the circumstances happened by somebody that's knowledgeable, knowledgeable about constitutional rights, knowledgeable about the options that are available to a young person in that circumstance. Now, Senator Flood had a-- spoke and said, I don't understand why the county attorneys wouldn't want a say in this. I don't either. In county court, if you come into county court and you are indigent and you are facing a charge that might result in jail time, the judge will look to the prosecutor and say, are you seeking jail time? The prosecutor says no and there's no appointed counsel. That doesn't happen. That was in the original version of the bill before the committee amendment. The committee amendment reflects the only concern that we heard from the prosecutors. We don't want to play in this-- in this process. We'll just let the judge make the call. So we put a committee amendment up. And now-- now you're right. It probably makes more sense to have the judge turn to the prosecutor and say, at any point, do you think you're going to want detention? No, I'm not appointing a lawyer. Because now we're just going to have the kid, the youth go get some alcohol education if it's a DWI, get on probation, observe the terms, not drink, get home by 10:00, report to your mom and dad. But if we're looking at a circumstance where a young person could be taken from the home, as best they can determine at this point in the process, if they're going to get taken out of the home, or that's one of the options, they should have a lawyer, not because the lawyer wants to make money or there's a greed involved in this, it's not. These are committed men and women who've gone through law school and committed themselves to the benefit of these young people. And then if the child continues to have problems--

**FOLEY:** One minute.

**LATHROP:** --and screws up and commits another offense, then we got another circumstance. Then we're back in juvenile court looking at another charge. And again, the judge can say, OK, you're back here, now there's a risk that you could be detained. You're getting a lawyer or at least you have the option to. And no one's going to make you take one, right? No one's going to make you. But this is-- this is important stuff. This is about fundamental rights that even a young person has. And they're triggered by the risk that they might be pulled out of their own family home. That's all it is. There's no grand conspiracy. It isn't the trial lawyers trying to find a way to make money. And a lot of lawyers start their practice out doing this kind of work. I'd be surprised if North Platte doesn't have plenty of qualified people to handle a juvenile court proceeding.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** That's time.

**LATHROP:** Colleagues-- Did you say time?

**FOLEY:** That's time.

**LATHROP:** Thank you.

**FOLEY:** Thank you, Senator Lathrop. Senator Flood.

**FLOOD:** Thank you, Mr. President, and members, good afternoon. Just to continue on with this amendment here that Senator Groene has, just a couple of starting comments. First of all, Senator Groene, and I think you and I actually agree on a lot of the big picture as it relates to rural Nebraska and attorneys. One thing I will say is that if you walk into juvenile court, it's not about stealing candy bars. It is-- it is heartbreaking to see a system that is dealing with young people that are in crisis. And when you talk about the family unit, I want to talk about a story that happened, I think two weeks ago in a county around where I live. Police entered a home. There's an 8-year-old sleeping on a couch and where under their head, there were bags of meth. We're talking about situations a lot of times in juvenile court where the moms and the dads because of a drug addiction, because of family history, for whatever criminal reason or noncriminal reason, one or both or the entire family's checked out. And these are the situations that kids grow up in that end up breeding what you'd consider criminal activity or acting out. When you are under the age of 19, you're a minor. Everybody knows that. You can't buy cigarettes. You can't buy alcohol. You are required to go to school until the age of 16 under the law. You can't sign or enter into contracts. And all of that is because science says your brain and your maturity have not formed up enough for you to be able to act as a legal adult for purposes of engaging in legal activities, like the right to contract. That's why I don't fundamentally oppose and I would encourage every minor to have a lawyer to navigate the process. Senator Lathrop is right. These lawyers are not trial lawyers. By his own admission, trial lawyers have more of a profit motive or have a profit motive, obviously. Juvenile court lawyers do it because they like to do it. I'm a general practice lawyer. I haven't done a lot of it. But I will tell you a story about representing a younger person. Now, this was not a minor. This was a 19-year-old. They came in on a Saturday-- on a Friday morning. He had been arrested the day before for taking money out of a fast food restaurant's till. And this is a situation where both mom and dad came in with son and they came into my office and I watched the young man sit there. I watched his dad and his mom, who I believe

are good people. And his dad said, look at the thief over there. Look at that little thief. I can't believe I raised a thief, he's nothing. He's no good. This young man-- or this guy is going to go right to hell. And I mean, he went off about his son. The mother was crying. It was a terrible situation. And his dad called him a thief 50 times right there. And yes, he did commit that crime. I asked mom and dad to leave the office, or the office, the room and have them sit up front, and I sat back there with the young man and I said, you are going to get through this. This is not the end of your life. This is not the end of your parents' life. You are-- you know, we're going to work for diversion. We're going to end up-- we're going to plead you to a misdemeanor. We will work through this and we will get you back on track. What I did that day was not anything legal. It was a chance to explain to this guy that this is something that happens to good people, that he messed up. He can own his-- his action. He can make restitution and we can plead his case in front of the judge. And judges are as much in the business of redemption and mercy as they are--

**FOLEY:** One minute.

**FLOOD:** --in punishment and pain, as you might say. And I would say that's the benefit of having a lawyer involved. Here's a couple of thoughts in this AM898. One thing that's in there that I like is the idea that the prosecutor can object to-- or encourage them to have a lawyer. I think the reason the county-- I know the reason the county attorneys are opposed to that is that they think it flies in the face of an ethical responsibility, that the prosecutor never have a role in the appointment of counsel of the opposing party, which I think is something we have to unpack, in Senator Blood's word, because they're-- they're-- they're not objecting to object. They're objecting because they think it violates a principle, ethical rule that they adhere to. I don't-- I personally think that we should have the entire state the same. I don't know that I'd pick the paragraph that Senator Groene did. I'd probably pick the other one. And for that reason, I'm technically a red on AM898, but I think this is something that we could--

**FOLEY:** Time.

**FLOOD:** --sort out before Select File. Thank you.

**FOLEY:** Thank you, Senator Flood. Senator Matt Hansen.

**M. HANSEN:** Thank you, Mr. President, and good morning, colleagues. I rise in continued support of Senator Pansing Brooks's effort to ensure adequate counsel for juveniles across the state of Nebraska and as such, I'll be supporting LB307 and AM273. I appreciate the sentiment of having a statewide standard that Senator Groene is getting at. If that's the case, I would like it to be the better standard, the higher standard, not the lower one. That being said, the original comments that I wanted to make, I want to make one clear distinction here early on, and I might turn my light to make it, to elaborate more. We sometimes talk about this as the right of the parent, the right of the parent to do something with the child, the right of the parent, the right of the family. It's framed in those terms. I want to remind everyone that a child has no constitutional right to consult with their parents when they've been arrested. A parent has no constitutional right to talk with their child when they've been arrested. The child and everyone does have a constitutional right to talk to an attorney. And that is the needle we're trying to thread here. I bring this up because I have worked on this issue, a companion issue about trying to improve parental notification when a juvenile is detained, when a juvenile is arrested. Because as of right now, the only obligation police have in statute when a child is detained is to take measures to notify the juvenile's parent and guardian. It is not required them to state the charges. It is not to require them to even give a clear description of the location or where they're being held, just that the child is in, you know, law enforcement custody. And I bring that up because, and we see this routinely, that there are situations in which a child is asking for their parent and the parent might be at the police station, but the parent and the child can be separated in a way that if a child or an adult was asking for an attorney, the police could not bar the attorney from entering, you know, an interrogation room or-- or whatever it is. And I say that because we're going to say we're going to let the parents handle it. The parents don't have the ability under our constitution to get access to the same resources and the same information that a defense attorney could. They are simply not under our statutes and our laws and our constitution granted an equal playing field. That's something I'm trying to fix statutorily. That's something that I would be happy to work with others if there's an interest of it. We got the bill out of Judiciary Committee. I've got a copy of it here, but I just want to flag that. And that's one of my fundamental things that I hear I think is a misnomer every time we talk about this bill is, we'll let the parents decide. We'll let the parents handle it. Yes, I'd like for them to be involved. I'm trying to help them be involved. But at the end of the day, we cannot equate what a parent is able to do to what

an attorney is able to do, because our constitution and our state law shapes it differently. They are entitled to do different things. And frankly, the attorney is entitled to do more, which is one of the reasons that I think it is so important that there is kind of a clear affirmative duty to know your right to an attorney, to have an affirmative thing of waiving counsel, to make sure counsel is appointed when some of the harshest punishments we have for a juvenile is up there. You know, I know we like to throw out these examples of, you know, somebody stole a candy bar and gets told off by the judge and they learn their lesson. You know, as some others have said, our juvenile justice system skews the other way too. I remember when I served in Judiciary, we had a young woman who I think had just turned 18 or 19, cry on the stand and talk about how she spent her 16th birthday in solitary confinement. And the underlying charge was-- was possession of marijuana. That's a charge for an adult that is a \$100 fine. And she, because the juvenile justice system said it, she needed to go out of home. It needed to escalate. Ultimately, the facility decided she needed to go to solitary. There's a crime for an adult, we would have never even gone to jail that she was spending her 16th birthday in solitary confinement.

**FOLEY:** One minute.

**M. HANSEN:** And I bring that up, I don't think that's a common example, but that's an example that does happen. So we kind of do the aw shucks, you know, you know, good neighborhood judge is going to tell the kid off about stealing a candy bar and it's no big deal. We deal with cases that are drastically on the other side of the spectrum too. There are cases where the child is going to spend considerable time in a facility out of home and all sorts of deeper implications. So I want us to weigh this. This is-- this is a situation in which we do not necessarily empower these parents to have the full ability that an attorney has, and at the same time, let's not pretend that no juveniles in a state are ever at risk of-- risk of kind of severe penalties because they are. With that, I rise in continued support of Senator Pansing Brooks in her effort. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Hansen. Senator Erdman.

**ERDMAN:** Thank you, Lieutenant Governor, and good afternoon. I appreciate Senator Groene bringing this to our attention. I-- I think he has made-- well, I believe, I know he has made some comments that have validity when he talks about rural Nebraska not having enough attorneys to do this. So I was wondering if Senator Pansing Brooks would yield to a question or two.

**FOLEY:** Senator Pansing Brooks, would you yield, please?

**PANSING BROOKS:** Oh, I'm sorry.

**FOLEY:** Would you yield, please?

**PANSING BROOKS:** Sure.

**ERDMAN:** Senator, so in regard to the question that if in my county we have maybe one or two attorneys in the whole county, will we have to require another attorney from a different county to travel in to represent these young people?

**PANSING BROOKS:** Gosh, I surely hope not, because that's why there wasn't even a fiscal note on this bill. The goal is to let-- just if they're taking him out of home. Supposedly, the judges are already doing this. This is just making sure. I mean, we've heard from Senator Groene and others that the judges are already doing this across the state. But then we also hear that some judges aren't. So clearly if they're already doing it, it shouldn't be any difference in cost because we're only talking about the judges or the kids that are being sent out of home.

**ERDMAN:** OK. So will they be required to have an attorney every time? In my counties, will those young people be required to have an attorney every time they appear before the court?

**PANSING BROOKS:** On a different charge?

**ERDMAN:** Any charge.

**PANSING BROOKS:** If it's on the specific charge that they have-- that takes them out of the home, then they will have to have an attorney each time they go back into court, if there's another--

**ERDMAN:** OK.

**PANSING BROOKS:** --hearing for some reason. But if-- if the county attorneys come back and say that they're adding new charges, then probably then, too, if it's going to be out of home.

**ERDMAN:** So did you say in your opening or did you make your comments that said the county attorneys were opposed to this? Is that correct?

**PANSING BROOKS:** I-- the-- in the hearing, the county attorneys said they did not want to be basically the gatekeepers, the people that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

decide when and if a child gets an attorney. And so Judge Turnbull then rewrote the bill and made this amendment, which is AM273, which basically said, OK, the courts, the judges will not make-- take any kind of a plea agreement unless, if it's to go out of home, unless the kid has had an attorney.

**ERDMAN:** OK. I've received a couple of comments from some of my county attorneys, and they've said that by requiring counsel, it's going to cost the counties money and in their opinion, it's an unfunded mandate on the county. Would-- could you speak to that?

**PANSING BROOKS:** I'd be happy to. Thanks for asking. So the NACO was originally against-- came and opposed the bill, as you will see in the committee statement. And when they-- because of what the county attorneys said. I-- then NACO came after we made the amendment to satisfy what the county attorneys had asked for, which ended up not working, I can show you all that verbiage from the hearing, but then NACO wrote me a note, a letter, and I have that, too, that says we pull our opposition and I had talked about bringing along a bill that would add a court fee to help pay for this. And NACO said that is not necessary for our purposes. There will not be the added expense.

**ERDMAN:** OK. My final question is, if you have the amendment there in front of you on page 1 of the amendment, that line 24, I have a question about that.

**PANSING BROOKS:** Page 1, line 24. OK, I think I can answer that.

**ERDMAN:** OK, on line 24 says "On or before July 1, 2022, the Supreme Court shall provide, by court rule, a process to ensure that juveniles are provided the opportunity to consult with counsel to assist the juvenile in making the decision to waive counsel." Can you explain what that paragraphs means?

**PANSING BROOKS:** Sure. We put that in and I went--

**FOLEY:** One minute.

**PANSING BROOKS:** --with the judges on that because the court often creates rules and they did that before on some of other juvenile justice bills, like making sure that a waiver is voluntary and knowledgeable for a kid. So the Supreme Court often weighs in. So we're just reminding them to do that.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**ERDMAN:** OK. All right. So they're going to set up the rules that they believe are appropriate for the process that they're going to be involved in.

**PANSING BROOKS:** They create a committee with judges, with county attorneys, with other members of the bar and-- and come together and figure out what's good for the state.

**ERDMAN:** OK.

**PANSING BROOKS:** Thank you.

**ERDMAN:** Thank you. I'm still trying to figure this one out. Appreciate that. Thank you.

**FOLEY:** Thank you, Senators Erdman and Pansing Brooks. Senator Albrecht.

**ALBRECHT:** Thank you, President Foley. I want to just rise today to really thank Pansing Brooks for this bill. And I know my colleagues are probably saying, I can't believe she just said that, but here's the deal. You know, in the four years that I've been here, I have noticed that-- that Chief Justice Heavican, we've had conversations. I carried a bill in 2019 that helped juveniles go through a mediation process if they are-- you know, if they've just had their very first offense. And obviously they're scared, just like Senator Flood was talking about. They don't-- they just really think their life has ended, but this mediation process has kicked in and I really believe that it is helping. It's helping the parents. It's helping the child. It's helping the community. It's helping other children realize that, gosh, maybe they aren't just going to lock us up. But the whole point of this is that this bill doesn't say there's-- that you have to have an attorney for every child. It-- it does say, as I was concerned about in the previous years, that an attorney would be assigned to every child no matter what they did. Well, I believe the restorative justice bill that we passed in 2019 has helped in that respect, that we're helping the parents, that they don't have to retain an attorney, if the attorney-- the county attorney just tells the child that he gets to go through mediation. Now, if he doesn't elect to go through mediation, he goes back in front of the judge, he probably better get an attorney because things are going to be different for him, because he's going to be stubborn and he doesn't want to do what he's supposed to do. But with a bill like this and knowing that I have not yet spoke directly to-- I have phone calls in still to my county attorneys. They're very busy people. But I did receive a letter from one of my

county attorneys that I respect, and he had talked about how horribly hard it is to sit on the bench today because of what's going on in the homes with these children. Again, Senator Flood had an excellent example. But, you know, we really need to figure out what we need to do in our own districts and hear what the boots on the ground have to say. Because when those judges are seeking our help because they don't know what more to do, we don't have places to put these children. There's no doubt about that. You know, it's not like you can put them away and teach them a lesson. I mean, sitting there, as Senator Hansen said, a 16-year-old in confinement for overnight, say, that ought to get their attention, but sometimes kids do dumb things. You know, we all have. But something like this, I will-- I will definitely listen. I will listen to why the county attorneys are feeling the way they're feeling. Maybe they haven't read the new bill. Maybe they're thinking it was last year's bill that-- I mean, people until you read the-- the-- the fine print, we need to know and have some faith in our system that we'll do the right thing for the children. But we better all wake up and go back home and take a look at what's going on with the-- with the youth, because they are in a completely different world than we were in when we were-- when we were young. So, again, I thank Patty for-- Senator Pansing Brooks for doing all that she has on a bill like this, because she is-- she knew it was a resounding no for a lot of us. But I think she's moving in the right direction. These are-- these are the kids that-- that need help, that she's talking about and need somebody to guide them through this. Because the court systems, I heard loud and clear from Senator Wayne that there were so many kids in juvenile systems that we needed more courts.

**FOLEY:** One minute.

**ALBRECHT:** So there are some things that we have to try to do on this floor to help the system move things through a little bit easier, but also give the children the ability to understand what they're-- what-- what their options are. You know, my concern as a parent, you know, if I can't be there, I mean, everybody better be educating their children that if you do cross that line and do the wrong thing, you're going to have to make some really tough decisions. You're going to have to become an adult really fast because mom and dad aren't going to be there at your side to be able to tell you whether you get this attorney or don't get an attorney. I have to have faith in the county attorneys and the judges that are going to put these kids in the system or try to mediate and try to make their lives a little bit better and work with them so they don't continue on. So I do stand in support right now of LB307. I want to hear some more of the-- the amendments that come forward and we'll see how it ends up. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** Thank you, Senator Albrecht. Senator Geist.

**GEIST:** Yes, Mr. President, I appreciate that and I also appreciate the testimony of Senator Albrecht because it's very similar to how I feel. What I appreciate that-- that Senator Pansing Brooks has-- has done here is, tried to strike that middle ground. And again, my biggest pushback is simply the-- it's-- it's in line 17, 18 and 19 that talks about when a juvenile cannot be removed from their home or detained outside the home by the court. And Senator Pansing Brooks and I have talked about fixing some of that language in between General and Select, and it might be more involved than that. We can talk about that off the mike. But-- but what I really appreciate here is that we're talking about times that it's crucial that a juvenile is represented by an attorney and then I will give to my rural senators, there are also times that it's not crucial that a juvenile be represented by an attorney. So I think there is a balance there. And I do think that-- that this amendment has struck a good balance. It's just worded in the negative where I would like it to be worded in the positive. So with that, I would say that I would go ahead and vote for this to move forward to Select so that we can have the opportunity to work on it together and really have an outcome. One of the things of-- that both of us agree on, and that is, it is so important that kids who are at risk and this-- this encapsulates many of the kids in our communities who are at risk. I really think we need a concerted effort moving forward and then the next several years to make sure that our efforts for treatment, for rehabilitation, for reestablishing a good mental health and even personal health, just a holistic human being needs to be directed to these juveniles. My own thinking and much of my study of Corrections has been focused on adults. And through the process of digging into this and several other issues that have to do with juveniles, it's made me think many of the individuals that are-- are highlighted in this amendment today that we're talking about, even in some of the ones in the amendment that Senator Flood dropped earlier, focusing our attention as society and as a Legislature on getting good, focused, evidence-based outcomes that we can get good results in juveniles will directly affect how many are going into our adult prisons. If we do a good job in juvenile court and in juvenile detention with juvenile treatment, my hope, my greatest desire would be that we slow the-- the progression into adult court to a trickle. I think that is the ultimate goal. And this is one step and one I think we can make together and do a really good job. So with that, Mr. Speaker, thank you very much.

**FOLEY:** Thank you, Senator Geist. Senator Wayne.

**WAYNE:** Thank you, Mr. President. I just told another senator, I don't even know where to begin. I'm the only one who actually use-- well, I still practice in juvenile law. I just don't as much since being down here because how it works in Douglas County, if a juvenile is detained today, they would have an 11 o'clock hearing tomorrow or 2 o'clock hearing tomorrow and I won't know that list of whether-- whether my client or new client until 7:30 or 8 o'clock in the morning. So it's hard to drive down here and practice when that happens. Senator Groene, this is not a moneymaker. I will tell you, most people leave juvenile because they actually can't make money when it comes to the time and energy you put in. What happens is a judge actually assigns you. They only assign an attorney if the public defender is conflicted out. First of all, all this would go to your public defender most likely. And if the public defender is conflicted out, let's say there's two kids or you already represented that kid before so they try to keep the same juvenile attorney, at least in Douglas County. But if there's two kids, the public defender would pick up one, but since they maybe possibly committed a crime together, the public defender can't represent both. So they appoint an outside counsel. We get appointed. We have to submit our bills to the judge. Every county that you are appointed, you have to submit a itemized billing to the judge and you have to bill in increments of 15 minutes. So if my phone call only lasted five minutes, I have to wait till I have three more before I can even bill it at 15 minutes. And that's the reason why most attorneys are leaving the idea of juvenile because it is county appointed by the judge and they are actually nickel and diming a lot of these attorneys out of the business. There was a point that I used to pick up juveniles and take them to the courthouse and the courthouse said, no, you can't do that anymore. So many times my kids wouldn't have rides there and we would have to continue hearings because I wouldn't get paid to pick them up. So we would do it out of the goodness of the heart, but there's liability issues with that so people don't do it anymore. So literally, it's-- it's not a moneymaker because you have to go to the court and ask for your fees and you have to submit an itemized statement of which the county attorney is a party of. So let me repeat that. The county attorney is a party of it because they represent the county in the fees. So you have to also give the county attorney notice of your fees. Otherwise, there's a Supreme Court case, actually, where the county wasn't notified of a billing of a fee, the Supreme Court sent it back saying no, the county still has counsel. Every county has an attorney. They have to be notified of every fee that you're going to submit because they have a right to object too. So you have a judge looking over you and you have a county attorney who practice in the civil division, which every

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

county should have, no matter how big or small, they have a county attorney that has to also review those fees and can object. So you're not going to send a \$30,000 bill on a case that only cost \$100. You just-- there's too many checks and balances for that to happen. Second, there's a lot of talk about the role of the parent and everything else. And Senator Flood kind of took the steam away because I was going to bring up contract law. Senator Groene, you would not allow somebody under the age of 18 to enter into a contract and then say, hey, you owe \$100,000, it's a life lesson. Kid, you got to pay it. You wouldn't do that because our state, our statutes say, no, you're not mature enough to enter into a contract. But at the same time, you're telling a kid that they don't need an attorney and they can navigate the system by themselves, but they can't even into-- enter into buy a car--

**FOLEY:** One minute.

**WAYNE:** --when they're 16. But we expect them to navigate a system that has lifelong consequences, lifelong. If your-- if your record is not sealed, you have to check a box the rest of your life that you committed a crime because a misdemeanor or a traffic ticket going through a stop sign is actually a misdemeanor. It's not just a traffic ticket. It's still a misdemeanor crime. The last thing I would say is there is perspective between county attorney and everybody else. The county attorney's role, they run on being tough on crime. So when you talk to your county attorneys, make sure you understand that is their role to put people away or to at least discipline them and hold them accountable. It isn't their role to be a parent. And that's what juvenile law is. It's about making sure that somebody is guiding a kid. It is a completely different role than what the county attorney has ever ran on. Your local county attorney has never ran on, I'm going to help kids be better. But that's what juvenile court is.

**FOLEY:** That's time, Senator.

**WAYNE:** Thank you, Mr. President.

**FOLEY:** Thank you, Senator Wayne. Senator Groene.

**GROENE:** Thank you, and thank you, Senator Lathrop and Senator Wayne and Senator Cavanaugh for not striking back at me I--- I'm just frustrated and Senator Wayne does a lot of good work. So does Senator Cavanaugh, but he worked I believe in the public defender's office. But we have one-- we do have a public defender, one individual, gets elected. So we have to hire attorneys and, Senator Wayne, you gave me

more ammunition why we don't have attorneys out there doing this kind of work because of the loopholes and there's not enough cases for them to survive doing it in juvenile court. We just don't have them. So this idea that we need to appoint attorneys and-- and Senator-- and I'll go on another point here, Senator Pansing Brooks rejected my offer apparently to have this amendment passed that she's not willing to do that, so I pulled back my offer to support the bill because I looked at somebody came over and pointed out to me, Senator Groene, you don't understand this, what they're saying, if the court accept the juvenile's waiver. I could support it if it said, the court shall accept the juvenile's waiver of counsel unless the court order and any probation order shall "affirmly" show that the juvenile. This still doesn't give the parents and I don't think the way some do, I don't think the world is completely going to heck. Most parents, single parents, dual parent, father and mother are good parents and most kids who get in trouble are good kids who do something wrong. Not all the kids in that courtroom need, because their parents are drug addicts, need an attorney. Their parents are quite able to, and Senator Wayne, I've repeatedly said a family unit makes these decisions, the parents and the child. If you look at this present statutes, which part of it is in my amendment, you can look at it. It says when that attorney is appointed, if the parents can afford that attorney, they shall pay the fees. Quite plain. The court shall forthwith appoint an attorney to represent juvenile for all proceedings before the juvenile court. If-- "later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section... If the parent willfully refuses to pay any such sum, the court may" submit-- "commit him or her for contempt, and execution may..." So the child is not going to pay the fee, the parents are when that attorney is appointed. Now, I've been told by some attorneys that judges are just ignoring that and the taxpayers are paying for every attorney. We got judges breaking the law, the law we said that they "shall" go after the parents who can afford and make them pay. They're just having the county pay for every attorney because they don't think it's fair that one kid gets it paid for and another one doesn't. Doesn't say they have a choice here. It says they "shall." We're living in a society where people are just making their own decisions if they want to obey the law or not. I can make some other comments. If you want kids to stay out of court, we start in the schools and we-- and we allow teachers to teach boundaries again to kids. That's where it starts. Also, I'd like to make a comment and said Judge Turnbull, they passed out his letter. In one paragraph, he says the bill is still allowing--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** One minute.

**GROENE:** --the juvenile between the ages of 14 and 17 to waive their right. That makes a good point again. Anybody under the age of 13 gets an attorney, no matter what it is, is appointed by statute. Any child under the age of 13 for any offense waive their right to an attorney. If the prosecutor, county or city agrees to waive the right to request a juvenile to be removed from the home. If the prosecutor will not agree, then counsel must be appointed. He supported this bill in its original language, he no longer supports it. You took the county attorneys out of it. You took the county attorneys out of it and I know why Senator Pansing Brooks said-- and by the way, I got hot under the collar and a little passionate here, but that's not at Senator Pansing Brooks. She's been working with us this year trying to do what she believes is right. I just wish she'd stick to her district and not wander out in the rural where we grew up. Most of us grew up in rural Nebraska. We've seen what happens as juveniles. We were juveniles.

**FOLEY:** That's time.

**GROENE:** We know the system works. Thank you.

**FOLEY:** Thank you, Senator Groene. Senator Friesen.

**FRIESEN:** Thank you, Mr. President. Would Senator Pansing Brooks be willing to yield to a question?

**FOLEY:** Senator Pansing Brooks, would you yield, please?

**FRIESEN:** So in the past, I've opposed your bill pretty steadfastly and you've made some pretty substantial changes. And so I just want to ask a few questions on-- on some of the issues I had in the past and how they're treated today. I'm just going to ask you to walk through a process where you have a 16-, 17-year-old, that MIP or something like that, get caught at a party and gets taken in and, you know, good clean kid otherwise, first time probably. What is the process that happens-- who makes decisions for that child or just kind of walk me through a little bit of that.

**PANSING BROOKS:** OK, as far as procedure, either Senator Cavanaugh or Senator Wayne would be best of all to ask those procedural questions, but I will quickly answer what I little-- what little I know. And so what happens is on something where there's-- they're not going to ask for detention because it's something simple, like an MIP, then they will go ahead. Either the county attorneys can put them in a diversion if there's a diversion program and it's fairly easy to set up a

diversion program. A diversion program would be writing a letter of apology to a hundred people or, I mean, they can make up what the diversion program is going to be. But also then if-- if they were going to seek detention because they had all these other infractions that came up after the first pleading, then they would have to refile another petition, which happens all the time. If you look at Judge Gendler said those-- those additional petitions are filed all the time.

**FRIESEN:** So what-- what right do the parents have when this first starts? Can-- do they have the right to waive an attorney or is it left totally up to the courts?

**PANSING BROOKS:** Actually, the Supreme Court has said that the right is up to the-- it is the child's right for an attorney because those children's rights may be different than the family's rights and may be different from the parents.

**FRIESEN:** So if the parent brings an attorney, can that attorney represent, they won't appoint one then?

**PANSING BROOKS:** No, that's correct. Yes, that is correct.

**FRIESEN:** So, again, if the parent chooses not to provide an attorney and it is a-- there's a possibility of out-of-home placement, then an attorney will be assigned.

**PANSING BROOKS:** Yes, unless they determine that that parent can afford it and then they have to show that they, that-- that they can't afford the attorney.

**FRIESEN:** OK, and then--

**PANSING BROOKS:** At least that's-- that's what's happening in Lancaster, Douglas and Sarpy.

**FRIESEN:** Right. They just-- they'd pick up the tab basically and make sure that that child has an attorney. So I, you know, in the past it seemed like that, you know, the child is 16- or 17-year-old and his attorney, which have that attorney-client relationship basically and no one could break that bond except the child, right?

**PANSING BROOKS:** Right.

**FRIESEN:** So if, for instance, you get into a process and suddenly the parent wants to hire an attorney versus the court-appointed one, can they do that and make that change--

**PANSING BROOKS:** Yes.

**FRIESEN:** --without a problem?

**PANSING BROOKS:** As long as the child agrees to that and it would be with advice of counsel as well.

**FRIESEN:** Yes, he would-- he would be represented by an attorney, but--

**PANSING BROOKS:** Yeah.

**FRIESEN:** --it would be the one chosen by his parents. OK, thank you, Senator Pansing Brooks. In the past, I've always-- I've always worried that that-- the way the bill is written, other years, it was-- it took away some of the parental rights. And I will also say that there are a lot of situations where children should be removed from that home and never see his parents again. We have some situations out there that I think we as a state are trying too hard--

**FOLEY:** One minute.

**FRIESEN:** --to always place the children back with their parents. And if we would look at the situations that they're being placed back into, I think we should look really long and hard at them. There are some situations where those kids should not go back, because that's the reason they're going to continue to fail is the parents and everyone related to them has either just completely given up their duties as being a parent and we have kept shoving those children back into those homes and I feel that at times we have-- we have failed that child. So thank you, Mr. President.

**FOLEY:** Thank you, Senator Friesen. Senator Wayne.

**WAYNE:** Thank you again, colleagues. I was just looking up, actually, I was looking up Lincoln County in JUSTICE to see how many juvenile cases and stuff like that they have. So I just want to be clear on the process of how-- how it works when it comes to fees, because the idea that this may be a moneymaker or something like that, I just-- I need to clear that up. And more importantly, I need you all to understand that you don't have to have a public defender to do it, because most of these-- actually every county, every county, at least in Omaha, we have a list, but not every county has a list because there's not that

many attorneys, but every county judge has the ability to appoint an attorney. That is their inherent responsibility to anybody. So what I'm saying is, right now every county when I was looking these up, there's already people who are billing for private-- private attorneys who are billing in Lincoln County, who are billing everywhere, and the judge is appointing them. To Senator Pansing Brooks, they are doing it, but not every judge is doing it. And the question I have is, does a constitutional right change upon the county you go to? That's the part that's really weird to me is that because you live in Douglas County and the Supreme Court says you have a right to counsel, you get it. But because you live outside of Douglas County, your constitutional right is different. That, as a body, how does that make sense? Your constitutional right is different depending on what county you live in. That doesn't make sense to me at all, actually. But as far as how this works is being paid, because I just looked at Lincoln County to make sure they're doing it the same way that we do it. You fill out an application for fee. You sign an affidavit that is notarized under the laws of perjury of what your fee amount is, which is set by the county. In some counties, it's \$100. In some counties it's \$50. Some counties it's \$65. That is left to the county board and the county judge to decide what they're going to pay per hour for an appointed counsel. After you sign an affidavit, you also have to submit your itemized billing. You send that as a court filing to the court and to all the interested parties, which is the county attorney and everybody else. You actually have a hearing on your fees and the judge, if there's no objection, they typically grant it. But the county gets to be involved in the process. So there's checks and balances about this runaway train that is going to be attorney driven. Second, when you talk about constitutional rights and the impact the juvenile system has on a life-- life opportunity, lifelong opportunity. For example, it's critical to know that if you don't get your records sealed, the rest of your life, that follows you. How do you get it sealed in-- in juvenile court? Well, you have to complete probation satisfactory and list under the terms. That's a critical lifelong decision that you are making at 14, 15 or 16. And while we sit here and debate whether a 16-year-old should be able to publish something in a newspaper or not, we're saying we don't care about that constitutional right when it comes to being in court. That we're just-- we're just going to make it that we know better or the parents know better for that kid. The problem is it isn't just the parent. It's the kid's life that has to live with it. And if you've never navigated that system, if you've never entered into a complex contract, if you never did anything like that, you should seek help.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

And guess what? You can waive that counsel. You can meet with that counsel and say, we got it.

**FOLEY:** One minute.

**WAYNE:** I got it. I know what I'm going to do. I'm going to admit because it's not even-- we're talking about guilt or innocence. That's not even what happens in juvenile. It's admit or deny. And you can admit and get rid of your counsel if you choose to. But you should at least have that conversation of what the juvenile system looks like, what the long-term impacts of that have on you as an individual kid and also as a parent what that looks like for my kid and then make that informed decision. We are essentially saying we are not going to allow you to make an informed decision. We just know how this system works and we know what's best. So I'm against AM898. I am for the Judiciary Committee and the underlying bill. I think it's a good bill and I think the constitution should apply no matter where you are. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Wayne. Senator Groene, you're recognized to close on AM898.

**GROENE:** Thank you, Mr. President. I don't know, maybe I'm a little old-fashioned, as they say. If they appointed a hundred attorneys and one kid and one family said, I don't want an attorney, they should have that right. If they appoint 500 attorneys and one family says, no, I don't want that attorney, they should have that right. That's a right. Yes, Senator Wayne, everybody should have a right to counsel. You have no right to vote, as I've said in the past, if they force you like Russia to vote. You no longer have a right, you have a mandate. If they say every Tuesday night you're assigned to say on the street corner and talk of free speech, that's no longer a right. To force an individual to have an attorney, you have taken their right away to have an attorney or not to have an attorney. It's as simple as that. We are not destroying kids' lives. In rural Nebraska, we've been doing this for decades. Kids have gone on, become state senators, done everything else after an MIP or vagrancy or whatever. They've learned their lesson being in front of a judge. And Senator Wayne, I doubt very much an attorney who's making what you showed me, the fees, 100 bucks or 200 bucks on a-- on a case after filling out, it looks to me what you showed me, they spend more time filling out the forms to get paid than they do representing a kid. That that attorney is going to be there six months or a year later when that kid breaks probation. There's going to be there during that time trying to keep-- tell him if you break probation, you risk your sealed records, which I didn't--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

I haven't heard that one before. I'd always heard if you're a juvenile, your records are sealed no matter what. But this bill is absolutely unnecessary. It's one of those college law school debates in the-- in the local coffee shop about should you have to have an attorney or not. We were fixing a problem that doesn't exist in rural Nebraska by the actions-- have you heard the senators who have stood up and said they want to do that? Every one of them is in one of the counties and they're all attorneys except for Senator Geist, who is not, and it happens to be in that county, a county where it's forced to have an attorney. Did you see any rural senators besides Senator Flood, and maybe say he'd vote for this just to be nice, but actually has some real concerns about it from rural Nebraska? Say they need this. You know, Senator Hughes, the other day learned a lesson. He dropped a bill doing-- being nice to the city of Omaha, a rural senator as far from Omaha as you can get and be a senator, except for Senator Stinner, I guess, and Erdman, dropped a bill on increasing fees on urban Nebraska and guess what happened to Senator Hughes? He got it handed to him. And probably rightfully so, but he was trying to be helpful. Senator Pansing Brooks is trying to be helpful that nobody in rural Nebraska asked her to do. Nobody. The judges met with her because they just wanted her to go away. That's what I was told by one, because they're afraid that maybe something worse could happen. But this does not give, after reading it again and looking at it and being talking to and a few judges contacted me, I'm going to withdraw my amendment. And because it needs to be refined some-- I've said I just need to bring that the county attorney should be involved. But I would be collegial. Urban senators, do not force something on rural Nebraska they haven't asked for and the kids have not asked for, no lives have been ruined that you can document. Be collegial. Do not force things on rural Nebraska. So far, we've done that in this body. If rural Nebraska asked for something, you've been collegial and helped us. When you've asked for something, we've been collegial and helped you. This is crossing that line. We don't need it. We don't want it. We do just fine out there taking care of our children and making sure they-- they are learning-- learned the lessons in life and go on after making mistakes. Without their parents being charged an attorney for an attorney, Senator Pansing Brooks told me and--

**FOLEY:** That's time, Senator.

**GROENE:** Is that time?

**FOLEY:** That's time.

**GROENE:** Thank you. But vote no, red.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

**FOLEY:** Senator, did you say you're withdrawing the amendment?

**GROENE:** Yes.

**FOLEY:** AM898 has been withdrawn. Is there further discussion on LB307 and the pending Judiciary Committee amendment? I see none. Senator Lathrop, you're recognized to close on the Judiciary Committee amendment.

**LATHROP:** Thank you, Mr. President. Colleagues, I think this has been a good discussion. I can assure you that Senator Pansing Brooks and I have listened closely. We have also identified people who have expressed concerns. We are happy to sit down and visit with people, try to work something out. For example, Senator Geist would like the language in the affirmative rather than the negative. I think those are things that we can work out, colleagues. But what we're doing today is recognizing something really important and I can tell you, you don't all have the advantage, certainly Senator Geist does, serving on Judiciary Committee. We see what happens to people's lives and their ability to get into college, get into military service, get into employment, get into living places to live. These things that happen to people even as juveniles follow them. And it is important that if things that have that kind of a consequence are going to result in someone being removed from their home, they are the kinds of things that can be problems for them into adulthood. That's the reason for the bill. The committee amendment is important because it was the-- it addresses the concerns expressed by the county attorneys when they appeared before the committee. I would implore you to adopt AM273 and move LB307 and we will work with those who are interested between now and Select. Thank you.

**FOLEY:** Thank you, Senator Lathrop. Members, you heard the debate on AM273. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 29 ayes, 3 nays on the adoption of committee amendments.

**FOLEY:** AM273, committee amendment, has been adopted. Is there further discussion on the bill as amended? I see none. Senator Pansing Brooks, you're recognized to close on the advance of the bill.

**PANSING BROOKS:** Thank you, Mr. Lieutenant Governor. And I just wanted to stay-- stand to say, number one, that I'm grateful for the judges

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate April 7, 2021

who worked with me. I am grateful to Senator Geist who has some vision of working together on some language that will make it more clear. I appreciate Senator Groene and his efforts on this. I had-- I am in agreement with him that it seems like the county attorneys should be involved, but then they're pointing back to a provision that says they shouldn't be involved, but the main thing is, what's important is that we get counsel for juveniles if they're going to be detained or sent out of their home. So I really appreciate each of you here today. I thank you for your votes on the committee amendment. And Senator Groene said they agreed just to have me go away. I think a lot of times that may be true, that people will agree that you go away, but I can live with that. So anyway, thank you all for your support and I hope you will vote green on LB307. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Pansing Brooks. Members, you heard the debate on LB307. The question before the body is the advance of the bill. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please.

**ASSISTANT CLERK:** 29 ayes, 2 nays to advance the bill, Mr. President.

**FOLEY:** LB307 advances. Items, please.

**ASSISTANT CLERK:** Thank you, Mr. President. Your Committee on Revenue chaired by Senator Linehan refers LB431. It's been reported out and placed on General File. Your Committee on Enrollment and Review reports LB497, LB527, LB664, and LB423 to Select File, LB497 and LB423 having E&R amendments. Additionally, your Committee on Enrollment and Review reports legislative bills, LB5, LB41, LB70, LB70A, LB78, LB252, LB405, and LB461 as correctly engrossed. Those will be placed on Final Reading. LR86, introduced by Senator Vargas. That will be laid over. Amendment to be printed: Senator Cavanaugh to LB380. Name adds: Senator Briese to LR85 and Senator Pahls to LR85 as well. Finally, Mr. President, Senator Stinner would move to adjourn the body until Thursday, April 8, at 9:00 a.m.

**FOLEY:** Members, you heard the motion to adjourn. Those in favor say aye. Those opposed say nay. We are adjourned.