

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate February 21, 2024  
Rough Draft

**von GILLERN:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-first day of the One Hundred Eighth Legislature, Second Session. Our chaplain for the day is Reverend Gregg Gahan from Craig-Alder Grove Parish, Craig, Nebraska, Senator Ben Hansen's district. Please rise.

**GREGG GAHAN:** Let's bow our heads for a word of prayer. Father God, we thank you for everyone who's here today. We thank you for the awesome responsibility that you've given them in governing the people of this state. We pray, Lord, for your guidance, for their conversation, for all the discussions that are had today. We pray that, above all, we thank you for your forgiveness. And we pray that your will be done in this Chamber this morning because all of us are sinners only trying to do the best in our lives. And we all are ultimately accountable to you. All this we pray. In your name. Amen.

**von GILLERN:** I recognize Lieutenant Colonel Tom Pesek, 1st Combat Engineer Battalion Vietnam, Marine Corps, from Brainard, Nebraska, Senator Bruce Bostelman's district for the Pledge of Allegiance.

**TOM PESEK:** Would you please join me in reciting the Pledge of Allegiance? 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.

**von GILLERN:** Thank you. I call to order the thirty-first day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Kirk-- Clerk, please record.

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

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

**CLERK:** I have no corrections this morning.

**von GILLERN:** Thank you. Are there any messages, reports, or announcements?

**CLERK:** There are, Mr. President. A Reference report concerning two appointments, one to the Nebraska Brand Committee as well as one to the Aeronautics Division. Additionally, a communication from the Governor concerning an appointment of Steven Bley to the Boiler Safety Code Advisory Board as well as Jeanne Salerno to the Nebraska Arts

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Council. Your committee on Education, chaired by Senator Murman, reports LB835, LB1201, LB1306 as placed on General File. Additionally, your committee on Agriculture, chaired by Senator Halloran, reports LB1207 and LB1313 as well as LB1368 to General File. Notice of committee hearing from the Revenue Committee. New A bill: Senator Sanders, LB771A. It's bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB771; and declares an emergency. Additionally, new A bill from Senator Brewer: LB1394A. It's bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB1394. Finally, Mr. President, a notice that the Revenue Committee will be holding an Executive Session when the Revenue public hearing concludes before 5 p.m. this week. Revenue Committee, Exec Session at the conclusion of this week's public hearings. That's all I have at this time, Mr. President.

**VON GILLERN:** Senator Bosn would like to res-- recognize Dr. Marlon Weiss of Lincoln, who's serving as the family physician of the day. Speaker Arch for an announcement.

**ARCH:** Thank you, Mr. President. I want to let the colleagues know that we have one change to the agenda, the printed agenda this morning. At the request of the introducer, we will be passing over LB1288 when we come to that on the agenda. Thank you, Mr. President.

**VON GILLERN:** Senator Hughes has guests under the south balcony: Landen Ford from Seward High. And Senator Bostelman has a guest under the south balcony: Gretchen Pesek from Brainard, Nebraska. Please stand and be recognized. Mr. Clerk, we'll now proceed to the first item on the agenda.

**CLERK:** Mr. Clerk-- excuse me-- Mr. President, first item on the agenda: LB856, introduced by Senator Fredrickson. It's a bill for an act relating to child care subsidy program; changes eligibility requirements; and repeals the original section. Bill was read for the first time on January 3 of this year and referred to the Health and Human Services Committee. That committee placed the bill on General File. There are committee amendments, Mr. President.

**VON GILLERN:** Senator Fredrickson to open.

**FREDRICKSON:** Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. I am very excited to be here today to introduce my personal priority bill for this session. LB856 has been referred to

by the Nebraska Chamber of Commerce as a game changer. It puts in place a model to address the child care provider shortage that has had enormous success in Kentucky, has now been implemented in Iowa, and is gaining traction in other states across the country. Since I introduced LB856 in Nebraska, it has received overwhelming support from the business community and from child care providers across the state. LB856 provides categorical eligibility for child care workers to participate in the federal child care assistance program. The bill is designed to attract workers into the child care industry by providing them with no-cost child care for their own children. The intent is to increase child care worker recruitment and retention in order to fully staff child care programs throughout our state. This will produce a multiplier effect, enabling more working parents to participate in Nebraska's overall workforce. LB856 is modeled after a successful Kentucky initiative. After one year, more than 3,200 parents employed in child care programs who are not otherwise eligible enrolled in the program. Approximately 5,600 children are now receiving subsidized child care as a result. Adjusting these figures proportionately for Nebraska-- assuming we see similar adoption here-- this categorical eligibility will mean 2,175 parent providers into the child care workforce. With research showing in Nebraska that each worker provides care for eight children, this bill would create stable care for more than 16,000 children in our Nebraska workforce. The LB856 concept is simple and measurable. More workers recruited and retained in our child care workforce means more children served and more workers into our overall economy. According to a statewide survey commissioned by University Extension and We Care for Kids, 34% of parents with children under five reported refusing a work opportunity, a promotion, or change because of child care costs. It is no secret that the child care is one of our top challenges in workforce development here in Nebraska. Other states are quickly working to adopt the Kentucky model to increase child care in their states, including some of our neighbors. Iowa, under Governor Kim Reynolds, has already initiated its own pilot program starting in July of last year, which allows the child care workforce to apply for the child care assistance program for their own children-- the same exact proposal that I am making here today. We have also seen indications that Colorado is already working on the same kind of eligibility for its child care workers. So it is becoming even more urgent that we move forward to create this eligibility as we compete with work-- for workers with our neighboring states. In bringing LB846, I have met with a vast array of stakeholders. The response has been universally positive. I am gratified by how many people from all across our state

have weighed in with their personal stories in the, in the online comments. In fact-- and this really impressed me-- we organically received supportive testimony online representing 31 of the 49 legislative districts. That was a mindblower because that shows true statewide support of this plan. I met with Governor Pillen last year prior to introducing the bill. I also met with the Governor recently and have communicated with members of his staff. I appreciate greatly the Governor's commitment to addressing our state's child care issues. One area of feedback that I was very happy to receive from the Governor's Office was the importance of making sure we have a solution that works both for large and small child care centers as well as family child care providers. The Governor's Office wanted to make sure we weren't picking winners and losers-- losers, so to speak, and I agreed. As a result, the committee amendment, AM2510-- which we'll learn about shortly-- ensures opportunities for all child care providers. The amendment addresses the issue that family providers in small centers often face as it relates to care of their own children. Currently, these providers-- especially in rural parts of our state-- are often not able to receive subsidies due to a DHI-- DHHS rule that limits the ability to receive subsidies for care of their own children. AM2510 requires child care employees to make reasonable accommodations so employees are not caring for their own children. But if reasonable accommodations are not available, parents can care for their own children while receiving the subsidy. So AM2510 will ensure equitable treatment of providers and keep us in compliance with federal child care subsidy rules. The amendment also adds a requirement that DHHS submit an annual report to the Legislature so that we can measure the impact of this legislation across the state. As it relates to the fiscal note, I have worked to reduce the level of financial investment. As a result, the amendment to the committee amendment that I will be introducing shortly will make this into a pilot program with an expiry date in 2026 and will impose a cap. What is so great about this pro-- policy proposal is that it gets to the heart of one of our mo-- two most central issues impacting our overall workforce shortage, which is child care. We know that lack of child care is pe-- keeping people out of the workforce. If we are going to address this major contributing factor, we must address the workforce crisis within the child care industry itself. I hear stories from people in my own district about parents who have spots in child care centers but still may at times face times when their children get turned away at the door. In fact, during the hearing, I got a text from a constituent who was literally on their way to drop-- to work that morning on their way to drop their kid off at child care. At the

door, they said they didn't have availability for the child that day because someone called out sick. So the lack of workers in the child care industry and high level staff turnover is hindering the ability of other folks to get to work as well. It's time to address this problem in a direct way. It's time for, as the State Chamber calls, a game changer. With that, I ask for your green vote on LB856.

**von GILLERN:** Thank you, Senator Fredrickson. Senator Linehan, you're recognized. Oop. Excuse me. As the Clerk indicated, there are amendments from the Health and Human Services Committee. Senator Hansen is Chair. You're open to recognize-- or, you're recognized to open.

**HANSEN:** Thank you, Mr. President. The Standing Committee amendment is a white copy amendment that makes a small but significant change to the introduced version of LB856. All the original provisions of LB856 remain the same, with the addition of the-- of an exception made for child care workers who provide care for their own child. More specifically, the amendment states that child care programs with an eligible household shall make reasonable accommodations so that an eligible applicant does not-- and-- and not a primary caregiver for their own child. However, if reasonable accommodations cannot be made, the individual will still be eligible for the subsidy. I think Senator Fred-- Fredrickson explained it very well in his opening. And as amended, LB856 was voted out of committee with six yes votes. And I would urge the body for their green vote on AM2510. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Hansen. Mr. Clerk for an amendment.

**CLERK:** Mr. President, Senator Fredrickson would move to amend the committee amendment with A-- AM2544.

**von GILLERN:** Senator Fredrickson to open on the amendment.

**FREDRICKSON:** Yes. Thank you, Mr. President. So colleagues, AM2554 [SIC] will replace the bill. It encompasses everything in the committee amendment, but it also adds a sunset of October 1, 2026. In addition, it imposes a cap of \$10 million annually. The fiscal note for \$21 million is higher than what we anticipate for actual costs. Based on what Iowa has experienced with its own similar program, we believe the actual costs will be dramatically lower. So I feel comfortable imposing a \$10 million cap. This is a prudent investment since the cost of doing nothing is \$489 million annually from missed

work opportunities due to lack of child care access, according to data from First Five Nebraska. With the reporting requirements we have added, we will be able to measure results. Doing this as a pilot program similar to Iowa's pilot program is the right step to take at this time. I am confident that this model will work as successfully in Nebraska as it has in other states. And when we see the results, the Legislature can then choose to extend or eliminate the sunset, depending on the context of what's happening in the world in a couple of years. The hope, of course, is that the child care crisis is not a permanent thing, and the sunset is in place to say, should this be resolved, this will organically dissolve as law. Should this continue to exist, however, the Legislature at that time, depending on the financial status of the state, et cetera, can determine whether or not this is an investment that the state wants to continue in. So with that, I ask for your green vote on AM2544, on committee amendment AM2510, and on the underlying bill. Thank you.

**von GILLERN:** Thank you, Senator Fredrickson. Now turning to the queue. Senator Linehan, you're recognized.

**LINEHAN:** Thank you, Mr. President. And I want to thank Senator Fredrickson for all the work he's done on this. I, I appreciate that this is a huge challenge for the state and for our workforce and that we need to do more on child care. I understand that. But I do find it somewhat ironic because, as Chair of the Revenue Committee, I am frequently, if not constantly, requesting certain tax breaks, tax cuts by the same groups of people that are all in support of this program. So I'm going to support this, but I'm going to have some questions between now and Select. If the state is going to do \$10 million for this program, what, what's pi-- private industry doing? How are they helping solve the problem? I think there needs to be more of a-- and maybe I'm just not aware. I think there needs to be more of a partnership here. I also think we need to look at the totality of what we're doing because last year in LB754, we did, we did quite a bit, if I remember, \$25 million in tax credits on early child care. Obviously, I supported that. But part of it-- and I'm not as prepared as one should be-- part of it was for child care workers, which was a tax credit. So here's, here's the big concern-- and I explained this to Senator Fredrickson yesterday-- if you got two kids and we get the child care wages up to match McDonald's or fast food, which is \$20 bucks an hour-- or \$25 in Denver, evidently, \$25 an hour-- where do we go when you've got-- you're making more money into child care if you're not having to pay for child care? Because the way I understand, there's no limit on family income here-- if you're not having to pay

for ch-- so let's say you're young, you got two children in child care. That's \$24,000 a year. You're going to get that for free. So that's \$24,000 tax free versus the teacher who's in the same kind of-- by the time their take-home pay is maybe \$32,000, \$33,000 but they're paying \$24,000 for daycare? You're, you're not going to have any-- you're going to have teachers going into daycare, which would be the right financial decision. I just think between now and Select we've got to look at how this part fits into every other problem we've got, which is a teacher shortage, daycare providers, making sure that we're not taking from one pot in-- the-- taking a problem we already have with the teacher shortage and making that bigger while we're solving this problem. Those are just some things I would like to talk to Senator Fredrickson and the rest of the Legislature about before this goes to Select. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Linehan. Senator Dorn has guests in the north balcony: 16 individuals from the Leadership Beatrice with Beatrice Area Chamber of Commerce. Please stand and be recognized. Senator Hardin, you're recognized.

**HARDIN:** Thank you, Mr. President. I stand in cautionary support of AM2544 as well as the rest of it, AM2510 and LB856. As some of you in this building know, I am a co-owner of a child care center in Colorado. It's a different financial situation there because the cost of that world is, oh, anywhere from double to three times what it costs across most of Nebraska. What I can say, though, is despite the overall differences in those costs, there are experiences to learn from, one of them is an echoing of what Senator Linehan just pointed out, and that is, even when you have a sunset, like AM2544 points out, what then? What next? Will owners of the centers here in Nebraska be able to continue that with the new expectation? That's an important question to ask because it also has to do with the longevity of the industry. One of those challenges, of course, is that when government pays for something, it makes it expected. In fact, it does, in fact, turn into an entitlement. What we are hatching here is a new entitlement. We always say to one another, let's not do something that creates an ongoing expense that we never see an end date to-- and that's my fear here, is that we're doing exactly that. I can tell you that in my center, we pay \$100-- currently \$120,000 a year for-- we, we pay for it. You can't not pay for the children of your workers to go there for free. If you don't do that, you don't get a worker. It's that simple. And so that is a hardship for a company. What I would suggest, though, in the cautionary tale is that when you allow the government in and they're going to pay that cost for you, that sounds

welcoming. There's lots of chocolaty goodness with that. The unfortunate thing is that it comes not with strings but with tentacles attached. They will then also begin to dictate other things that your business is allowed to do and not to do. And you realize that there's a fine line between your business and the personal lives of the people you serve: those families. The families themselves may not be real fond of the government's involvement inside that room. We essentially are a surrogate for the families. We live in a world where Mom and Dad both have to work. They have to work because they like really crazy things like food, clothing, and shelter. But that said, it costs so much money. And there's no doubt Nebraska, like every other state, suffered the ravages of, nationally, what is about 16% of the child care centers closing. By the way, most of those centers that closed were independent centers like mine, not the big corporations. You didn't ask for it, but I'll offer it anyway: six of the seven largest child care entities in the United States are foreign-owned. Let that sink in. And so independent centers really do have the ability to provide the best care, and so we have to protect them. The long-term game is what I'm cautioning about. And when the government gets involved at the state level--

**von GILLERN:** One minute.

**HARDIN:** --or at the-- thank you, Mr. President-- or at the federal level, the challenge is that they will continue to control. They will angle. They will manipulate. And that is the caution that I, I bring. And I could cite a lot of examples of how it becomes very difficult to run a free and fair business for the people you serve in that context. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Hardin. Senator Jacobson, you're recognized.

**JACOBSON:** Thank you, Mr. President. Well, I rise in support of AM2544, which, as Senator Fredrickson has indicated, that is a white copy amendment. So that would basically replace AM2510 and, and LB856 and really become the bill. I really like the enhancements that were done there. I do want to address maybe a couple of the issues that have been raised so far. I think that, fundamentally, daycare is where it begins. Clearly, we have a nursing shortage. We have a teacher shortage. We have a shortage of daycare providers. We have shortages in every occupation out there. You pick the occupation, I'll tell you they need people. But if we-- we need to begin at the right place, and I think we begin with child care because that's the first impediment



to get people back to work. And so if we can get more people being child care providers-- who, by the way, most don't have any benefits and are paid a base salary that's probably less than what they're paid at McDonald's. So if they can bring their kids in and have child care provided for free, suddenly it works for them to get in that profession. So I like that idea. I like the sunset because I still believe that we're in a point right now where we're going to work through-- we're still working off the pandemic. We need to get more people back to work. And once we get people back to work-- and that might include going through a recession in the meantime-- that we're going to be in a much better position a couple years from now than we are right now. I would also tell you, as it relates to teachers-- having been a teacher many years ago-- as frightening as that thought may be-- many years ago, when I was a teacher, one of the benefits of being a teacher is once your kids are school age, when you're in school teaching, your kids are there too. And in the summer months when you're off, they're off. So they don't have the child care burden that other occupations have. And so I think that is an advantage that they have. Nurses, on the other hand, it's a different story. And so-- and I would also like to address a little bit Senator Linehan's concerns about what do employers need to do. I can tell you, from our company's standpoint, we're there to help provide some kind of subsidy, if necessary, to be able to help key employees or employees to be able to afford to utilize child care and still be employed. I think more employers are going to have to be looking at that as well. But we first have to begin with having sufficient numbers of child care workers and sufficient child care facilities available. That's what I love about this bill. I want to thank Senator Fredrickson for bringing it. I am in full support of AM2544 for those reasons. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Jacobson. Senator Dorn, you're recognized.

**DORN:** Thank you. Thank you, Mr. Chairman. I [INAUDIBLE] Senator Jacobson probably stand up in support of AM25-- AM2544 and generally the bill. But I do have some questions here as I read the bill, as I read the white copy. Would Senator Fredrickson yield to some questions?

**von GILLERN:** Senator Fredrickson, will you yield?

**FREDRICKSON:** Yes, of course.

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**DORN:** OK. Trying to understand for sure. How does-- I understand that you have to be a child care worker, private or under somebody else, how do they claim, I call it, this payment or-- what-- is it on their income tax when they're filing income tax? Is it a payment from the state? How, how is that paid out?

**FREDRICKSON:** Yep. So thank you for that question, Senator Dorn. So the way this bill works is that it, it creates a, a categorical eligibility for the federal child care subsidy. Essentially, if you are a direct child care provider working a minimum of 20 hours a week or more in direct child care, you're, you're considered what's called a, a protected population under this bill. So your income is no longer determined as a factor in determining your eligibility for the federal child care subsidy.

**DORN:** Read that part. Yes.

**FREDRICKSON:** Yep. So in other words, the way that they would apply for this would be the way that they would similarly apply for the federal child care subsidy, and the payment would be in the same mechanism that, that currently exists.

**DORN:** But, but let's suppose they qualify then. How-- I mean, how, how do they end up, I call it, end up with the money? How does the money come back to that person then? Is it a direct payment? Do they have to turn in a claim for it? Or now do we go through as they pay income tax now they don't have to pay as much, I guess? That, that's what I really tried to understand.

**FREDRICKSON:** Yep. Absolutely. So, so the, the way the federal child care subsidy works is that that's a payment to child care centers who accept the subsidy. So the actual recipient of the-- the child care provider themselves, who's a recipient-- or, a beneficiary of this bill, would not receive a check directly. That-- their child care center would get the check to pay for their, their child's care.

**DORN:** So then it goes back to the family itself. The money ends up in the hands of the family or does it end up in the child care worker?

**FREDRICKSON:** The money ends up at the child care center. So that, that, that--

**DORN:** In the child care center.

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**FREDRICKSON:** --that, that's taking care of the kid. It's paying for the, for the actual child care [INAUDIBLE]--

**DORN:** So they would have to be the one that filed for this--

**FREDRICKSON:** Yes.

**DORN:** --for the payment or whatever? Of the \$10 million, how is the \$10 million then allocated? Is it a first come, first serve basis or is it, oh, oh, we're going to prorate it out. We're going to get in claims for so long a period of time and then prorate it out?

**FREDRICKSON:** Yep. That's a good question. So with the amendment, we did put a cap at \$10 million. So the way that that would work is that, yes, it would be first come, first serve. That said, we feel really confident that \$10 million will be sufficient. I'll give you an example of Iowa, our sister state, who's actually developed this. Their first year, they ex-- they are anticipating-- we just-- we've been in touch with Iowa quite a bit with their up-to-date fiscal information. They anticipate that costing \$8 million in Iowa by the end of the pilot year and anticipate it will be \$10 million for year two. Now, it's not apples and apples, per se. Obviously, there's differences in our child care industries between Nebraska and Iowa. But we, we believe that the \$10 million is a, a fiscally responsible amount to allocate. And at the same time, we think it's going to be enough to move the needle on this and show it's effective.

**DORN:** Well, particularly since Iowa has probably two to three times as many-- as much population as Nebraska-- so theoretically, if you divide the math out, it should work. Thank you. Thank you very much. Appreciate that. When I came up here six years ago-- and I think a lot of senators maybe were the same situation I was-- when we ran the first time, child care really wasn't even on the radar. And since then, because of working issues, COVID, whatever you want to call it, as we have progressed-- the last four or five years have gone forward, now it is probably one of the five topics that I get visited with the most about. I know our community--

**von GILLERN:** One minute.

**DORN:** --down there in-- did you say time? One minute. Thank you-- that, that this has become a very important part of my district. How do we incentivize workers? How do we, I call it, make it so that Mom now can go to work instead of staying home with one, two, or three

kids because it was cost prohibitive-- prohibitive for them to work because they could make more money taking care of their children? So some of these things, yes, they are very good. Did appreciate Senator Hardin's explanation of it. And I know as we've gone forward the last couple years, I also hear about many businesses that, to incentivize workers or get workers, they are opening their own daycare or child care. So thank you very much.

**von GILLERN:** Thank you, Senators Dorn and Fredrickson. Senator Dungan, you're recognized.

**DUNGAN:** Thank you, Mr. President. Good morning, colleagues. I just wanted to take a couple of minutes to rise today in support of LB856 as well as both of the AMs on the board. Colleagues, I had the opportunity this morning to meet with a number of our friends in the labor community, and we were talking about issues that are before the Legislature that affects sort of everyday, working Nebraskans. And obviously here in the Legislature, we've taken a lot of focus this session to kind of get back to a lot of those issues: workforce, housing, health care. And one that came up in the conversation consistently was child care. Because when you have a family who's trying really hard to make ends meet and they're working, one of the hardest things is trying to find that child care. I have a number of friends right now who have young children and-- I, I don't have kids myself, but when I talk to them about the costs of child care, it's, it's astronomical. And it almost becomes completely un-- impossible for them to afford the child care before the kids are in school. And it just creates this great burden on them. And these are people who are fully employed, who are working full time, even fairly decent paying jobs. But despite that fact, they simply don't have enough money to make ends meet because child care is just such a big issue. I've been really encouraged by our Legislature this year. There's a whole slew of bills that have been proposed to address the child care problem, and I think that everybody's taking it seriously. But I do think that Senator Fredrickson has really hit the nail on the head here by identifying a program that has worked in other states and adapting that for Nebraska. Any time we can have a bill that we can look to another state and say, this has operated well and it does, in fact, function, I think it puts us in a better position to implement that program here. I've spoken to Senator Fredrickson multiple times about this bill and I am confident that he's worked very hard with all the stakeholders to find a, a way to make this work. And the fact that this really does have that bipartisan, nonpartisan support I think is indicative of the benefit of LB856. I've also spoken to my friends in

the Chamber. The Chamber has identified this to me as well as a priority, something that I think is going to be huge in ensuring that we can continue to increase workforce while still accommodating issues like child care. So I, I appreciate all the comments we've had so far this morning. I think if we are going to be serious about helping everyday, working Nebraskans, this has got to be a piece of the puzzle. There is no silver bullet, and it would be wrong for any of us to pretend like we can fix all of this with one bill, but this is certainly one of the building blocks of the foundation of how we can create a better Nebraska for working Nebraskans. So I, I, I applaud Senator Fredrickson's incredibly hard work on this. And I would encourage my colleagues to vote green on both of the AMs and LB856. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Dungan. Senator Hughes, you're recognized.

**HUGHES:** Thank you, Mr. President. I rise in support of LB856 and the underlying amendments that have been brought forward. I want to thank Senator Fredrickson for researching this topic during the interim and bringing this bill. As people have mentioned before, this is one of the top issues facing the state of Nebraska as well as the United States. And we are in a workforce shortage, and hopefully this could help start addressing that issue. I really do appreciate the work that Senator Fredrickson has done, putting in the sunset date and to relook at the program then and to determine if this program is doing what is intended to do. It's interesting to me to hear that Iowa estimated an \$8 million-- or used an \$8 million cost their first year. And you figure they're double our population, so perhaps ours would be closer to that \$4 million range. I did cosign this bill. And I urge you to support and move this bill on with the, the listed amendments. And again, thank you, Fredrickson, for bringing this issue. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Hughes. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. President. Sorry. I was in a deep conversation about property tax relief back here, so-- now, I wasn't ready to speak on this, but. Should I talk about property tax relief? There is a, a very simple solution on property tax. We should legalize marijuana and tax the heck out of it. Missouri last year just did \$1 billion in sales. That's a lot of revenue we could have. But anyway, I was going

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to ask Senator Hardin to yield to a question now that I'm back on my bearings.

**von GILLERN:** Senator Hardin, will you yield to a question?

**HARDIN:** I would like to.

**WAYNE:** So Senator Hardin, I was slightly confused because I was back here having multiple conversations. But I noticed that you voted no in committee. But then you spoke-- and I wasn't sure if-- you had said you were cautioned, but I wasn't sure if the amendment by Senator Fedrickson has "relieviated" some of your concerns.

**HARDIN:** It alleviates some of my concerns. What happened in committee is that AM2544 was not yet reality, and we were told it would be forthcoming. Here it is, and that's helpful. I'm still not in favor of the overall package for the reasons I articulated earlier, as well as echoing what Senator Linehan had to say, and that is the long game of what does this accomplish, which is essentially a new entitlement. And at the end of the day, what will the, the \$10 million look like in a few more years? We have yet to see a sunset disappear. We state a lot of sunsets, but we don't actually ever experience one while walking on the beach here in Nebraska. And so my concern is it will only continue to grow and keep going. By the way, you didn't ask for it. But if I can offer, I think the very creative people in Gering are working on a method of fixing this problem. And what they've come up with is essentially going business to business and saying, look, you have a need of about how many spots within a child care situation, to each business, and they're getting those businesses to commit to securing places in a new child care center. And my concern is that if we let the government fix it-- the government has a hard time fixing things. There are a lot of leaks in that governmental bucket. They're actually trying to take care of it through the market, and I think that's the way to accomplish this. And so I--

**WAYNE:** When you're thinking of, of private companies stepping in and helping out, are you thinking that should just be the cost of their business? Or should the state provide a tax credit to those companies to help encourage them? What, what are you, what are you thinking along that line?

**HARDIN:** Along that line, I think that's the cost of doing business. Right now, I'm paying it myself. My own business is paying it, down in Colorado. But in a nutshell, I think it is something where businesses

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across the state do need to recognize that if they want quality workers, this is something that they have to help provide for.

**WAYNE:** Thank you. And I-- only reason why I ask is I have a, a bill on Select File, LB235, that, that touches the tax incentives-- a tax credit for, for businesses around child care. And the issue that we're running into in-- at least in my district-- is there isn't any real land available on their own site. So the way our code is set up right now that-- businesses can get a tax incentive-- or, a tax credit, I should say, if they provide child care on their current property. And so that doesn't work in east Omaha because there's not a-- the property's kind of landlocked. So it's just a slight change. It doesn't cost the state anything. But I was just wondering your thoughts--

**von GILLERN:** One minute.

**WAYNE:** --if it's the cost of doing business versus maybe we should provide some incentives to encourage businesses to be a better community participant. So thank you for that conversation.

**HARDIN:** Thank you.

**WAYNE:** I yield the rest of my time back to the Chair.

**von GILLERN:** Thank you, Senators Wayne and Hardin. I recognize Senator Kauth.

**KAUTH:** Thank you, Mr. President. I'm currently a no on this bill. I'm, I'm still trying to sort through it. I'm very pleased that the \$21 million is off the table because that was just a shock. I have concerns about the state paying for what is, in essence, an incentive for businesses to attract talent. As I've talked to people who own child care centers, they've always said, well, yeah, your, your kid coming with you is part of the deal. That's why they went. Going door to door, I talked with a child care worker who said-- I mean, she was pregnant and she was working at a child care center, and she chose that child care center because when she had her baby her baby would stay with her. That was part of what attracted her to that specific business. So I have concerns about the state suddenly messing with what could be incentives to attract good employees. Again, I'm really glad the amendment came in. That changes how I'm looking at it. I'm-- I, I still have concerns. I, I really like the bills we passed last year, the child care worker tax credit, where we pay directly to child

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care workers so that they can choose what to use their money for. Again, I see this as something as a business incentive, and I'm just not sure where I stand on the state paying for businesses to attract workers. I'm going to keep listening to the discussion. But as of right now, I'm a, a no. Thank you.

**VON GILLERN:** Thank you, Senator Kauth. Senator Erdman, you're recognized.

**ERDMAN:** Thank you, Mr. President. Good morning. So listening to the discussion this morning, I think I'm in the same camp as Senator Kauth. This is a, a situation that needs to be dealt with. I'm not sure that this is the correct method. But I was wondering if Senator Fredrickson would yield to a question.

**VON GILLERN:** Senator Fredrickson, will yield some questions?

**FREDRICKSON:** Yes, absolutely.

**ERDMAN:** Senator Fredrickson, is there, is there a sunset on this?

**FREDRICKSON:** There is, yes.

**ERDMAN:** What is it, two years?

**FREDRICKSON:** October 1, 2026.

**ERDMAN:** So if this program is as successful as you say it is and we get to that point, it will be nearly impossible to sunset this program. Would you agree?

**FREDRICKSON:** I don't know if I do agree with that. There's a lot that can change in that time period. I mean, the hope is that the child care crisis that we're in right now is not a permanent issue for our state. We can look to our sister states who have implemented this. So Kentucky, for example, the success they've had under Governor Kim Reynolds. Iowa's doing this. We actually just learned this week Governor Huckabee Sanders in Arkansas is supporting this program as well. So what's happening that we're seeing nationwide is that this is something that's actually working to address the issue. And I think even more importantly, it's having the multiplier effect of helping the overall economy because more people are getting back to work. So the hope is that that would not be the case where this is a permanent thing that happens.



**ERDMAN:** So let me ask you then, have any of these states had a program such as this in, in, in effect long enough and any of them had a sunset that they extended the sunset or they let it set? In other words, has the problem ever been solved in those states?

**FREDRICKSON:** So this, this concept came as a result of the pandemic. So the pilot programs have not yet come to a sunset yet. That said, the way sunsets work in our Legislature is that you would have to pass an entirely new bill--

**ERDMAN:** No, I understand that.

**FREDRICKSON:** --to extend that. So-- and I know you understand that. So-- which certainly wouldn't be-- so if this were no longer an issue or no longer fiscally prudent on the state's department-- and that-- and I'm a big proponent of that. I, I don't think that we should be offering a permanent program that's not necessarily going to be an issue in 20 or 30 years, so.

**ERDMAN:** OK. Thank you.

**FREDRICKSON:** Yep. Thank you.

**ERDMAN:** All right. Appreciate that. So I've been here 7.5 years plus one day. This is day 31. So 7.5 plus one ha-- one day. I've yet to see a sunset take effect. We have, as Senator Fredrickson said, introduced and adopted a new law to continue that program. So when we vote for this, just let it be known: this is a new program. Irregardless whether there's a sunset on it or not, this is going to be a continuation. Maybe his amendment that's coming up next reduces it to \$10 million, which is a pretty significant fiscal note. But just know that-- don't count on this being a sunset. Thank you.

**von GILLERN:** Thank you, Senators Erdman and Fredrickson. Senator Conrad, you're recognized.

**CONRAD:** Thank you, Mr. President. Good morning, colleagues. I rise in support of my friend, Senator Fredrickson's, bill and his personal priority bill for this year and thank him for introducing this important measure. I know Senator Fredrickson has worked hard to try and address proven solutions to some of our state's top challenges, and those sit-- the, the intersection of some of those challenges sit at the forefront of LB856. So we know from ongoing conversations across the state, across the political spectrum, business leaders, union leaders, working families, bankers, home builders, teachers. We

know from our own experience talking to folks at our town halls and going door to door on the campaign trail that workforce is our number one challenge in Nebraska and that child care, access to child care is one of the most important solutions attendant thereto. And so I know as a working mom with two little ones how expensive access to quality child care can be and how hard it is for so many families who are working hard and playing by the rules and, and still finding it challenging to access care because there's either a lack of workforce to staff those centers or it's just-- it's priced out of reach for far too many families. And I think it's really important to remember a couple of key statistics in regards to this debate. Number one, we know from the Planning Committee report, chaired by my friend, Senator DeBoer, and the membership of a diverse group of senators in this body put forward a really important report that shows Nebraska is number one, friends, number one in the amount of adults that work full time year-round and are living in poverty. So we, we, we have to have a clear-eyed look at that statistic and figure out how we can address those issues. We also need to remember-- and related exactly to that point-- that Nebraska consistently ranks at the top or near the top in the amount of both parents working outside the home, and particularly women working outside of the home. And this is, is part of who we are in Nebraska with a strong work ethic. And so we have to be thoughtful about anything that we can do to improve access to child care. It's about economic development. It's about workforce challenges. It's about ensuring healthy, thriving families. And, and I think that this measure goes a lot of steps in the right direction to improving our, our child care access issues that exist and supporting working families, who are the backbone of our state and our economy and that need a, a little bit of help in this regard. The other thing that I think is interesting about child care, not only does it have significant economic development impacts behind it, but I also see child care as a key reproductive justice issue. And when I was out knocking on thousands and thousands of doors, talking to my friends and neighbors in north Lincoln, when and if we had those hard conversations about maybe having a--

**von GILLERN:** One minute.

**CONRAD:** --different point of view-- thank you, Mr. President-- on certain aspects of reproductive health and reproductive justice, we could almost always find common ground together after we respected each other's beliefs in that regard, on family planning and on child care and of things of that nature. So I think we really, again, need to lean into those solutions that not only are good for families and

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economic development but that also advance reproductive justice as well. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Conrad. Mr. Clerk for announcement.

**CLERK:** Thank you, Mr. President. Announcement: the Exec Board will meet in room 2102 at 10:00 a.m. for an Executive Session. Exec Board, Exec Session in room 2102 at 10:00.

**von GILLERN:** Thank you, Mr. Clerk. Senator Vargas would like to recognize 30 individuals in the north balcony from the Nebraska Civic Leaders Program from Omaha Public Schools. Please stand and be recognized. Turning back to the queue. Senator Hardin, you're recognized.

**HARDIN:** Thank you. Someone just asked me this question: how much will this cost per child? And the answer is, it depends. A, an urban area-- a suburban area is always going to charge significantly more than a rural area. So Omaha costs per child are much higher than Mitchell, Nebraska. And that being the case, we are therefore going to have to decide who gets paid what. And so there will not be a one size fits all with this just because of economics and how it works across the state, across the urban and rural divide. And so with 93 counties, we might be able to come up with some categories for some shorthand on that. But by and large, you are talking about differences in what that will cost. So that's just one of many dominoes that gets knocked over. It will, in fact, create a number of those kinds of decisions administratively that have to be decided, so. Thank you, Mr. President. I yield the rest of my time.

**von GILLERN:** Thank you, Senator Hardin. Senator Murman, you're recognized.

**MURMAN:** Thank you, Mr. President. I, I think I'm going to be in support of this bill. I-- my beliefs are very similar to Senator Kauth and Senator Erdman, beliefs were recently voiced on the mic. I'm going to support anything that will incentivize families to stay together, that, that-- anything that can keep families together, especially when there's very young children involved. And I think-- the way I understand this bill, this does incentivize that because child care workers that have young children can have child care of their children and, at the same time, keep child care available for those in our state that truly need it. I don't think I will support-- or, I know I won't support any bills that pay or incentivize families to send their

kids to child care because, as I said, the best thing for our society, for families is to have-- spend as much time. And it's only a few years that families have very young children. So I want to incentivize them to stay at home with their children or be with their children as much as possible. I do want to-- I do support bills that will keep child care available in the state because, like I said, those families that are low income or because of, you know, single parents and those kinds of things, child care is necessary. But as far as economic development, I'm not as excited that way because I do think the family is much more important than, than how well our state does financially even though that's not-- that's important too. And as far as, should government support child care or businesses? I think ideally the business should support child care because if they can-- if it can be worked out that the child care is available in the business, that way the worker that has children in the child care can stay-- or, or, be with the-- their, their kids as much as possible. So it would-- that's a good thing. And of course, I am concerned about any kind of government interference with child care. You know, I think the, the best determinant of what's best for kids is the parents and the family. So I, I don't want to do anything from the state or federal levels that will interfere with the parents determining what's best for their own family. So I'm going to-- I think I will support this bill. But as far as incentivizing families that are, are well enough off financially to send their kids to child care, I, I won't support that, but we do need child care in the state-- I do realize that-- for the-- for those who truly need it. And-- so, so if the family is, is, is having their kids in child care because of needs and not just wants, that-- I know that that's something that's needed, so. I just wanted to, to voice my concerns about this bill about--

**von GILLERN:** One minute.

**MURMAN:** --and about child care. But at the same time, like I said, keep child care available and incentivize child care so that it is available but not incentivize anything that will interfere with the family structure or, or families being together as much as possible. Thank you very much.

**von GILLERN:** Thank you, Senator Murman. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. President. What's up, Darius [PHONETIC]? I ain't seen you in a while. Good seeing you up there. I-- actually, Senator Fredrickson, the reason I'm even talking on your bill is I'm just

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trying to kill a little time so we don't get to Senator Bosn's bill, which, honestly, I'm going to filibuster probably eight hours, six hours, four hours each way, so. I mean no disrespect, but I just need to make sure we don't get there today. So I'll yield the rest of my time to Senator Fredrickson.

**VON GILLERN:** Senator Fredrickson, you're yielded 4 minutes and 20 seconds.

**FREDRICKSON:** Thank you, Senator Wayne, I appreciate that. I will just speak-- and I, and I'm hoping to get a vote-- to get to a vote on this pretty quickly, so. And I'll be covering a lot of the things that have been brought up in my close and some of the concerns that have been brought up with that. And I will just say I am appreciative of the debate and how it's going so far. I really appreciate my colleagues who I've had an opportunity to touch base with on the floor. I know Senator Hardin and I just had a great conversation about reimbursement rates. I appreciate just tapping into different expertise in the floor around these things. So I'm continuing to listen, and I will be closing soon, hopefully. And we'll go from there, so. Thank you, Mr. President.

**VON GILLERN:** Thank you, Senators Wayne and Fredrickson. Senator Kauth, you're recognized.

**KAUTH:** Thank you, Mr. President. Don't go too far, Senator Fredrickson. I'd like to ask Senator Fredrickson to yield some questions.

**VON GILLERN:** Senator Fredrickson, will you yield to some questions?

**KAUTH:** Do you want to go over there?

**FREDRICKSON:** I might go over here.

**KAUTH:** Yeah.

**FREDRICKSON:** Oh, I'm over here. Got me-- yes, of course.

**KAUTH:** There. We're good. Thank you, Senator Fredrickson. OK. So I have quite a few questions. First, what does success look like? How will we know that this program is successful?

**FREDRICKSON:** Right. So the way that-- so in the-- in AM2544, we require an annual report from the Legislature from the Department of

Health and Human Services. So the way that's actually enumerated, it says: The department shall submit a report electronically to the Legislature on December 1 of each year that includes the monthly number of enrolled children in households by county and program type for households eligible pursuant to subdiv-- subdivision (2)(b)(ii) of this section. So we are hoping to measure success based on the reporting from the department who's actually administering this. And we've requested that that's specifically broken down by county because that's going to be helpful for us as a legislative body to determine, is this something that is being maybe disproportionately utilized in rural areas or in urban areas? Again, based on the data that we've received from the other states who have already implemented this, it seems to be very effective in, in both contexts, but we want to ensure that that's actually the case with Nebraska. So the amendment requires an annual report. And again, the other component of, I think, measuring success, of course, is that, with the sunset in 2026, that gives the Legislature an opportunity to sort of look at the reports that we've received at this time, look at the investment, the actual cost that this has been for the state. Has that gone over the cap-- well, it wouldn't go over the cap-- but is that under the cap? And whether or not that's still relevant to continue as a state. That in addition as-- what I said earlier, would require passing an entirely nother bill. So I have reason to believe and, and, and certainly trust this body that if this is not effective or a wise use of state funds that we simply wouldn't pass another bill on this.

**KAUTH:** OK. So, so for part of the reporting-- and this is probably getting into really nitty-gritty-- are you going to have anything that says, OK, here's how many people are using this service. But I'd also like to know how much-- how many kids are still not being served. Does that make sense? Like, is there a way to say-- I mean, if we say, well, we've got 1,000 kids who are in the program, we don't know if that's 1,000 out of 100,000 or if they're-- it's 1,000 out of, you know, 1,001. I just, I just want more clarification for that.

**FREDRICKSON:** Sure.

**KAUTH:** And then this-- and this is getting really nitty-gritty. As we look going forward, do you know what our birth rates look like? As-- I mean, if we're talking about, you know, zero to five, helping these, these families out before they get to school, are, are we setting up a program that's going to be really big and get really kind of hooked on big government spending if we don't have the need?

**FREDRICKSON:** So to answer your question about how, how many children we're-- are utilized-- so the way the Department of Health and Human Services issues reports currently is they enumerate the benefits that are given. They enumerate what type of benefit, how-- so, so they have the data on the actual provisioning of, of their benefits. In terms of how many children are-- I think you said might be left out of this-- well, I think that those-- that's, that's bigger questions we could look into some of-- you know, I know UNO has data population surveys that they can look at. I could check with DHHS if they look at general population trends. They might do that, and that's certainly something that I'd be open to including if the body felt that that would be relevant to include in the report.

**KAUTH:** OK. Yeah. And, and as far as, you know, looking at, at how many who are being served is, is it actually fixing the problem? Is it a Band-Aid? Is it a good Band-Aid? Those are-- there is a lot of information that we'll need to be gathering. Is there a, a per person limit on the number of kids you can have? So say I have four kids--

**von GILLERN:** One minute.

**KAUTH:** Thank you, Mr. President. Is there a per person limit? Is it per child care worker or is it per child care facility? How does that exactly work?

**FREDRICKSON:** So the way the bill works is that it, it would provide-- if you are a direct care provider, that you have-- your, your own children would, would have the categorical protective population eligibility. So, yeah. If you, if you have multiple children, then, you know, in theory, if they are utilizing child care services, then they, they would qualify should you meet all the-- of the qualifications of the program.

**KAUTH:** And real quick: how much-- what is the cost per child that you'll be paying to these child care centers?

**FREDRICKSON:** So it would be the, the rate that the Legislature sets for the child care subsidy.

**KAUTH:** Say that again.

**FREDRICKSON:** It would be the rate that the Legislature sets for the, the child care subsidy, the federal subsidy. So that's what this taps into. So that flat rate that we provide--

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**KAUTH:** So it's not based on, you know, you have a, an expensive child care center, it's-- you have a rural. It's, it's not based on their individual rates?

**FREDRICKSON:** Yep.

**KAUTH:** It's based on--

**FREDRICKSON:** So the, so the, the federal child care subsidy has a, has a-- it has a cap. So it's like this is the--

**von GILLERN:** That's time, Senators.

**FREDRICKSON:** --maximum--

**von GILLERN:** Thank you, Senator--

**KAUTH:** Thank you. Thanks, John.

**von GILLERN:** --Kauth and Senator Fredrickson. Senator McDonnell has approximately 100 individuals in the south balcony from the Nebraska State AFL-CIO, labor leaders from across our state. Please stand to be recognized. Turning back to the queue. Senator Linehan, you're recognized.

**LINEHAN:** Thank you, Mr. President. Good morning again, colleagues. I just want to remind-- and Senator Bostar, he's not here because they're in Exec Committee right now, I guess. And I also was looking for Senator Hansen, if he's around. Last year in LB574, which was the income tax package, I think a lot-- I mean, there was two comments yesterday-- or-- I think yesterday about-- when we were on inheritance tax how last year all's we did was do things for the wealthy, which is not true. So I'm not going back to that argument exactly, but I want to remind people what we did in the income tax bill last year. So \$15 million in tax credits go to parents. So if you're a parent with a child-- I think it's under six or five and under-- and your household income is no more than \$75,000 a year, we-- you will get an ear-- a income tax credit-- meaning refundable income tax credit-- of \$2,000 per child. So that means if you have two children five and under, you will get \$4,000-- even if you didn't owe any income taxes, you would get \$4,000 back. If you-- \$150,000, it's \$1,000 per child credit. So-- and that program's capped at \$15 million in tax credits. We also did \$10 million for child care providers and a refun-- not refundable, but a tax credit for the companies-- the organ-- the owners of the child care industry. That was \$10 million. And then we did another \$10



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million for child care workers to get an earned income tax credit. And it's not broken down in the fiscal note, but basically it says that if you're a child care worker, you can get a tax credit. So what I, what I would like to see between now and Select is all these programs laid on top of each other to see exactly what we're doing. Because I also-- and Senator Hansen, I do see you. Could yield to a question?

**von GILLERN:** Senator Hansen, will you yield to a question?

**HANSEN:** Yes.

**LINEHAN:** Senator Hansen, I asked you a little bit ago: what do we-- what does the Department of Health and Servi-- Health and Human Services spend now on child care?

**HANSEN:** Yeah. You're looking at about \$111 million a year, state; and then about \$40 million through a federal-- block grant funds that are used for child care purposes.

**LINEHAN:** So that would be \$151 million--

**HANSEN:** Yes.

**LINEHAN:** --that's going to child care right now through--

**HANSEN:** Yes.

**LINEHAN:** --Department of Health and Human Services.

**HANSEN:** I believe so, yes.

**LINEHAN:** OK. Thank you, Senator Hansen. So we have those programs-- I'm not sure where all that's going. I think we should figure that out. We also have I think in 20-- am I doing this right? Yes-- 2012, the Legislature passed a constitutional amendment that we can now use property taxes for four-year-olds in public schools. And I don't know how many four-year-olds are in public schools that we are subsidizing through both grants from the Department of Ed. The Department of Ed also hands out grants to start preschools and to subsidize preschools, which-- this is all good. I'm not-- obviously, child care is important. I have grandkids in child care. It's expensive. It's hard on families. I get that. But I want to make sure that we're looking at the whole picture. And I know that we have programs at the University of Nebraska that's looking at child care. We have nonprofits that are looking at child care. And it seems like we've got all these kind of

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faucets we're turning around and turning on, and I don't think we should do more until--

**von GILLERN:** One minute.

**LINEHAN:** --we have a better understanding of the whole. Because I-- when I look at the reports that we get from different organizations that are working on this, there's never any data. I would like to see-- when we're spending-- we're already spending \$150 million-- well, more than that-- probably almost \$200 million-- I would like to see-- well, it's easy because we've got \$150 million we're spending, \$35 million in tax credits. So that's \$185 million. That doesn't count anything that the Department of Ed's doing. Doesn't count anything that public schools are doing. I want to see a whole picture here before we, we keep going down this road. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Linehan. Senator Meyer, you're recognized.

**MEYER:** Thank you, Mr. Chairman. One point I want to address for, for rural Nebraska child care-- and it's, it's probably different than the metro areas, is the, the competition for these workers and the historically low wages they-- that they earn. Just in, in my hometown, a similar worker might be able to go to the Runza restaurant and make 1/3 or 1/2, 50%, more than they're able to work in child care. And we're blessed because we have three child care centers in, in our rural town, and that's just barely enough to cover the spots that are available. So if this bill would, would help the wage situation equalize-- equalize that more to other wages that are paid for similar type jobs in a community like St. Paul or anywhere in rural Nebraska-- because I'm more familiar with that than the metro areas. I, I, I am sup-- in support of this bill. It, it just becomes-- I, I'm, I'm, I'm thankful there's a sunset. I think that allows us time to thoroughly study the issue. Senator Linehan made very good points. There's a lot of these programs out there, but this one, I think we would be able to get some pretty hard data by 2026 exactly how many workers were-- I'll just do the-- use the word "enticed" to come into the industry to work in a child care center because of this incentive. So with that being said, I'm in support of the amendments and the base bill. Thank you.

**von GILLERN:** Thank you, Senator Meyer. Senator Conrad, you're recognized.

**CONRAD:** Thank you so much, Mr. President. Thank you, colleagues. I echo a lot of what my friends, Senator Linehan and Senator Meyer, have already talked about and think it would be important to have a more careful and thorough understanding of the different programs that we have available to assist, particularly working families, with accessing child care, which is a, a critical need to deliver for working families to address the fact that we have the highest percentage of full-time workers working year-round who are living in poverty, that we consistently have one of the highest rates of both parents in the workforce and women in the workforce. And we need to really get a handle on how these different programs and funding streams really work together. I do think Senator Fredrickson's idea here is an important piece of the puzzle. That's why it's generated such strong support. And then I just wanted to put in one note in terms of context. So Senator Linehan and Revenue Committee members fought hard to put into the place the \$15 million for families in relation to child care tax credits, \$10 million for providers, and \$10 million for child care workers. You might remember from that debate last year-- while I am appreciative of those efforts-- I find them incredibly inadequate to address the full need. And instead of having a \$10 million giveaway to corporations as part of that package, we should have moved that \$10 million directly to families who need it. That would have been a better utilization of those funds. Additionally, coll-- colleagues, when you look at-- yes, that is meaningful and important work that we put into place last year to address child care and working families, but it is a mere drop in the bucket when it comes to the overall need for addressing this issue in Nebraska and the overall price tag that we put forward for huge tax cuts to help the wealthiest in Nebraska and the biggest corporations that were hundreds of millions of dollars, if not billions of dollars, in terms of fiscal impact. And we were only able to carve out a few million dollars for child care. Finally, let me put this in perspective for my community. It's been estimated in Lincoln: in one year, the child care gap is over \$17 million. That's one community for one year. So we need to think about how significant the need is here. We need to stop dancing around the edges. We need to stop admiring the problem. And we need to do more as quickly as possible to deliver for working families and to help move our economy forward. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Conrad. Seeing no one else in the queue, Senator Fredrickson, you're recognized to close on the amendment.

**FREDRICKSON:** Thank you, Mr. President. Thank you, colleagues, for this I think really important discussion and for this robust debate. I've been having a number of conversations with folks off the mic about some of the issues and questions that have come up, and I really appreciate folks' willingness to work with me on this bill between General and Select. Senator Linehan's mentioned a handful of times-- and I know her and I spoke yesterday. And I think she has some valid concerns. I think that it's certainly responsible as a state to look at anything we're doing legislatively, espec-- especially something this significant to look at it comprehensively in the context of everything we're doing in this dynamic. So I am totally open to changes to this bill between General and Select. It's-- I mean, this is sort of like-- this is no ego amigo. I mean-- and I think that this is something that we all agree on is a big issue as a state. It's been named as the number one priority in our state by multiple different organizations. So I am more than happy to work with and actually really looking forward to working with colleagues on, you know, cleaning this up between General and Select to ensure that it's-- it makes sense for Nebraska and that it's robust. I do want to make a couple of points that got brought up in debate. There was-- a couple folks have mentioned that businesses are already offering this. And some businesses are, in fact, offering this. But what we learned in the hearing and what we learned from online comments is that the vast majority of businesses in Nebraska are not offering this as an option. And frankly, those who are offering it as an option actually reached out supporting this bill, saying that they need this bill for support. So I think that that's sort of a compelling argument, but I think that if we look at the businesses that are offering child care in our state, in Nebraska, they support this bill. They want this bill. They know that, currently, there is such a high scarcity of child care providers. The reality is this bill-- as we've seen in Kentucky, as we're starting to see in Iowa, as I imagine we're going to see in other states that are implementing this-- this addresses the scarcity issue. So it becomes less of a concern with that. So I appreciate that. I also really appreciate the concern that this might become a permanent entitlement. You know, that's certainly not the intention. And frankly, that's why there's a sunset on the bill. You know, I think that's, that's why sometimes there's this dynamic of fighting against sunsets. I'm totally open to the sunset. My hope is that we don't have a child care crisis in two or three years. So the hope is that this bill mends the gap, addresses the problem. As we've seen in other states, it's addressed the problem effectively and efficiently. So I'm confident that the Legislature in 2026 will be able to

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determine whether or not this makes sense to continue. Finally, I am super grateful to my colleagues, my cosponsors of the bill. I'm grateful to the Governor and his office for his interest in child care and his willingness to meet and discuss this bill and ways that we can make it work for Nebraska. Special shout-out also to the State Chamber, the Farm Bureau, the Platte Institute, and others who have all supported this bill. With all that, I ask for a green vote on-- there's a lot on the board. So AM2554, AM2510, and LB856. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Fredrickson. The question before the body is, shall AM2544 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 38 ayes, 0 nays, Mr. President, on adoption of the amendment.

**von GILLERN:** The amendment is adopted. Seeing no one in the queue. Senator Hansen, you're recognized to close on AM2510. Senator Hansen waives closing. The question before the body is, shall AM2510 be adopted? All those in favor vote aye; all opposed vote nay. Mr. Clerk, record.

**CLERK:** 38 ayes, 0 nays on adoption of the committee amendment, Mr. President.

**von GILLERN:** The amendment is adopted. Mr. Clerk.

**CLERK:** Mr. President, Senator Fredrickson, I have AM2158 with a note you wish to withdraw.

**von GILLERN:** It is withdrawn.

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

**von GILLERN:** Seeing no one else in the queue. Senator Fredrickson, you're welcome to close on LB856. Senator Fredrickson waives closing. The question before the body is, shall LB856 be advanced? All those in favor vote aye; all opposed vote nay. Roll call, reverse order has been requested. Mr. Clerk.

**CLERK:** Senator Wishart voting yes. Senator Wayne voting yes. Senator Walz. Senator von Gillern voting yes. Senator Vargas voting yes. Senator Slama voting yes. Senator Sanders voting yes. Senator Riepe voting yes. Senator Raybould. Senator Murman voting yes. Senator Moser voting no. Senator Meyer voting yes. Senator McKinney voting yes.

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Senator McDonnell voting yes. Senator Lowe. Senator Lippincott voting no. Senator Linehan voting yes. Senator Kauth voting no. Senator Jacobson voting yes. Senator Ibach voting yes. Senator Hunt voting yes. Senator Hughes voting yes. Senator Holdcroft voting yes. Senator Hardin voting no. Senator Hansen voting yes. Senator Halloran voting no. Senator Fredrickson voting yes. Senator Erdman voting no. Senator Dungan voting yes. Senator Dover voting yes. Senator Dorn voting yes. Senator DeKay voting yes. Senator DeBoer voting yes. Senator Day voting yes. Senator Conrad voting yes. Senator Clements voting no. Senator Machaela Cavanaugh voting yes. Senator John Cavanaugh voting yes. Senator Brewer voting yes. Senator Brandt. Senator Bostelman. Senator Bostelman. Senator Bostar voting yes. Senator Bosn voting yes. Senator Blood voting yes. Senator Ballard voting yes. Senator Armendariz voting no. Senator Arch voting yes. Senator Albrecht voting no. Senator Aguilar voting yes. Vote is 35 ayes, 0 nays, Mr. President, on advancement of the bill.

**von GILLERN:** The bill advances. Items for the record, Mr. Clerk.

**CLERK:** Mr. President, your committee on Enrollment and Review reports LB938, LB685, LB829A, LB992A, and LB857 as well as LB1035 as placed on Select File, some having E&R amendments. Your committee on Banking, Commerce and Insurance, chaired by Senator Slama, reports LB1307, LB582, LB991, LB1120 as placed on General File, some having committee amendments. Additionally, your committee on Education, chaired by Senator Murman, reports LB1072 as placed on General File with committee amendments. Notice of committee hearing from the Health and Human Services Committee. Amendments to be printed: Senator Sanders to LR277CA as well as LB1022. Senator Conrad amendment to be printed to LB71. Your committee on Enrollment and Review reports LB184, LB307, and LB829 as correctly engrossed and placed on Final Reading. Additionally, communication from the Governor concerning the withdrawal of consideration for confirmation of Timothy E. Krause from the Natural Resources Commission. That's all I have at this time, Mr. President.

**von GILLERN:** Clerk, proceed to General File: LB1355.

**CLERK:** Mr. President, General File: LB1355, introduced by Senator Vargas. It's bill for an act relating to the Opioid Prevention and Treatment Act; restates findings and purpose; changes provisions relating to the Nebraska Opioid Recovery Fund; provides for grants; harmonizes provisions; and repeals the original section. Bill was read for the first time on January 17 of this year, referred to the Health

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and Human Services Committee. That committee placed the bill on General File with committee amendments, Mr. President. There is an additional amendment.

**von GILLERN:** Senator Vargas, you're welcome to open.

**VARGAS:** Thank you very much, President. Good morning, colleagues. I'm bringing you LB1355, which will make critical updates to the Opioid Recovery Fund to address the serious public health crisis stemming from the rapid increase in the use of prescription and nonprescription opioid drugs by establishing aid programming. I brought this legislation due to not only what I'm hearing at the local level and the state level in terms of funds, making sure that they're getting out to the community. There's the Opioid Remediation Advisory Committee, which is constituted to provide recommendations for use of the moneys from the Opioid Recovery Fund. And these aid programs are based on a lot of those recommendations also in what the administration is also been working on. It's the intent of the Legislature to appropriate \$4 million annually from the Nebraska Opioid Recovery Fund beginning in FY '24-25 for grants for aid programming under the Opioid Prevention and Treatment Act. The aid programs will be created by State Patrol, health care facilities, health departments, and behavioral health regions to meet a variety of needs in response to the opioid epidemic, and the Department of Health and Human Services will oversee and direct these programs. In 2022, 175 Nebraskans died of a drug overdose. Of those 175 deaths, 60.7% of cases had at least one potential opportunity for intervention. This statistic stands out to me when we truly think about the human cost of not getting these dollars out. In the United States, 81.8% of all overdose deaths involved at least one opioid. In Nebraska, 67% of all overdose deaths involved opioids. Illegally made fentanyl was the top opioid involved in both cases. LB1355, or the committee amendment, also includes LB1325, which will clarify that pharmacists and retailers are allowed to sell fentanyl test strips over the counter to the public. It also allows, but does not require, local health departments to distribute fentanyl test strips at local public health department facilities without a fee. LB1325 does not appropriate any state funds to be spent on these tests. Also included is LB1320, Senator Ballard's bill, which would require any emergency medical service that treats or transports a person experiencing a suspected or actual overdose to report the incident to the Department of Health and Human Services within 72 hours when possible. All these bills were heard in HHS Committee without opposition and were voted out of HHS Committee unanimous. I appreciate Senator Hansen and all the work that

him and his committee have worked in on this. Thank you for your time this morning. I would encourage a green vote on LB1355. Another thank-you to PRO, Governor's Office, and Interim Director Green. We will be working between General and Select File on some more amendment language to make sure that we are looking forward to more transformational use of the ongoing funds and continuing to work on, on this issue. So this is not the last you're going to hear of it. We're going to work on something between General and Select. But I appreciate you. And a big thank-you also to Senator Sara Howard for all of her leadership on addressing this incredibly important and personal issue. And just thank you. And I urge your green vote. And I'll talk about the amendments shortly.

**von GILLERN:** Thank you, Senator Vargas. As the Clerk has stated, there are amendments from the HHS Committee. Senator Hansen is Chair of the committee. You're recognized to open on the amendments.

**HANSEN:** Thank you, Mr. President. Yeah. I'll touch on some of the changes in the bill that the committee amendment brings that Senator Vargas mentioned. Standing Committee AM2559 contains AM2393 to LB1355, LB1325, and LB1320. I'll touch on those here kind of towards the end. Right now, AM2393 strikes the original sections of LB1355. The committee amendment authorizes the Nebraska State Patrol Division of Drug Control to carry out duties pursuant to the Opioid Prevention and Treatment Act, adds to the purpose of the Opioid Prevention and Treatment Act remediation, including the creation of aid programs, and adds to legislative findings that the opioid epidemic in Nebraska is a serious public health crisis stemming from the rapid increase in the use of prescription and nonprescription opioid drugs, and then provides definitions. DHHS's administrative costs for the awarding of grants under the act shall not exceed an amount equal to 10% of the grants awarded. Any funds appropriated or distrib-- distributed under this act shall be spent in accordance with the act and the terms of any verdict, judgment, compromise, or settlement. DHHS is required to report on the grants awarded under the act. Also in kind of-- a little, little more of an important part of how this funding will kind of be distributed that Senator Vargas touched on. I'm sure he'll explain more. It is the intent of the Legislature to annually appropriate from the Nebraska Opioid Recovery Fund beginning in fiscal year 2024-25. There's, there's three parts to this here. So \$3.5 million to DHHS to award grants through a local public health department aid program as well as a health care facility aid program. It's a minimum of \$500,000 to be awarded 90 days after the award of the grant. Second, \$1 million to the Nebraska State Patrol to



facilitate prevention efforts, provide for medication distribution and training activities, provide for opioid and fentanyl first responder training, and establish a Corrections transition and reentry aid program. And that's another-- minimum of \$500,000 to be awarded. And thirdly, \$2.5 million to DHHS for disbursement to behavioral regions for opioid prevention and harm reduction. And, and so we also put two of the bills into, into this one as well that have to do with the opioid epidemic. In addition, AM2559 amends LB1325 into LB1355. So LB3-- LB1325 is-- was also introduced by Senator Vargas. It allows pharmacies to sell fentanyl strips for testing. Also, local public health departments may distribute these tests without a fee. And further, AM22-- AM2559 amends LB1320 into LB1355. This bill, introduced by Senator Ballard, requires mandatory reporting for emergency medical personnel that treat or transport someone experiencing an overdose. The report shall be done within 72 hours and sent to DHHS for submission in the Washington/Baltimore High Intensity Drug Trafficking Area Overdose Mapping and Application Program or similar program. And I think that's probably the longest amendment-- committee amendment I've had to read so far, so. There's a lot of-- there's a lot of stuff into it. And I encourage everyone to kind of pay attention and, and listen to what Senator Vargas has to say about the bill and also the work that he's willing to do now between General and Select File in working with the department and PRO. So thank you very much, Mr. President.

**von GILLERN:** Thank you, Senator Hansen. Mr. Clerk for an amendment.

**CLERK:** Mr. President, Senator Vargas would move to amend the committee amendment with AM2629.

**von GILLERN:** Senator Vargas, you're welcome to open on the amendment.

**VARGAS:** Thank you. We were working with Drafters on a technical amendment. That's what this technical amendment is. It just makes sure that we're harmonizing the provisions related to where the cash fund is coming from and making sure that it actually can get funded. Again, this is not general funds. This is from the opioid recovery settlement funds. And so this is making sure that it's actually-- can take from the appropriate cash funds. And so technical amendment we worked on with Drafters. And appreciate your support of this amendment.

**von GILLERN:** Thank you, Senator Vargas. Turning to the queue. Senator Conrad, you're recognized.

**CONRAD:** Thank you, Mr. President. Good morning, colleagues. I rise in support of the measure that my friend, Senator Vargas, has brought forward and the component parts in the Health Committee amendment that my friend, Senator Hansen, rightly introduced. But I want to raise a, a couple of global notes about this measure because it's something that I've been monitoring for a long time. So number one, the state's utilization of settlement funds just in general is something that I think we need to have a lot more discussion about and be a lot more engaged with from an appropriations perspective, from a legislative perspective. I have had a variety of different measures introduced and pending over the years in regards to bringing more transparency and clearer lines for clear appropriation authority for the state's use of settlement funds. I think particularly when we look to some of the past abuses, perhaps, that have emanated from the Attorney General's Office-- not under Attorney General Hilgers in this regard-- but that have, I believe, misappropriated the-- some of those hard-fought settlement dollars that our Attorney General is bringing to our state when he is suing in the name of our citizens for harms that have befallen our citizens. That cannot and should not become a slush fund for the Attorney General or any other entity of government. Those funds come because Nebraskans were harmed. When it comes to the opioid settlements, I know that there have been a variety of stakeholders working hard to try and figure out the best plan for Nebraska. That being said, friends, we are behind the curve. Other states are moving much more swiftly, with more certainty to ensure that these settlement dollars, which are meant to help people most impacted by the opioid crisis on the front lines, are being pushed out to the front lines. And instead, we've seen infighting. We have seen a pilfering of these dollars to various and sundry government administrative expenses, high-price consultants. And I, I think that's misguided. And I think that's wrong. I think that Senator Vargas's measure helps to reset a more appropriate pathway that reaffirms appropriation authority for these funds and that puts a finer point on the need for Nebraska, for lack of a better term, to get its act together and to get these dollars out to the front lines in our communities where people are being harmed in regards to our opioid crisis. Additionally, we don't have to start from scratch on this or any other issue when it comes to the best way to utilize these funds. We have perhaps one of the best models out there with the Health Care Cash Fund that generations of Nebraskans have worked on to figure out a way to get the most bang for the buck in terms of those settlement funds from the tobacco settlement to make sure that those dollars can go farther and farther because of how we invest them, how we utilize them, how we protect

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them. And we need to think about, if permissible under settlement terms, whether or not the opioid trust-- the opioid settlements--

**von GILLERN:** One minute.

**CONRAD:** --can be utilized in the same way. Thank you, Mr. President. The last point, colleagues, that I want to lift in this regard is that there is a significant balance growing in the Attorney General's Office in regards to settlement dollars for, again, settlements that the Attorney General has litigated on behalf of our citizens because they were harmed through various and sundry actions. And we need to make sure that those dollars are going to their best and highest purposes. There is a pending proposal before the Appropriations Committee to sweep \$15 million of those funds into property tax relief. Colleagues, that is not what those funds were intended for. It is absolutely inappropriate, and we need to be watchful and thoughtful about that. Yes, of course, property tax relief is important and a top priority. Those settlement funds should not be swept--

**von GILLERN:** That's your time, Senator.

**CONRAD:** --for that purpose. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Conrad. Senator Ballard, you're recognized.

**BALLARD:** Thank you, Mr. President. Good morning, colleagues. First of all, I'd like to thank Senator Vargas for including LB1320 in his personal priority. LB1320 would require EMS that treat and transport individuals experiencing a suspected or actual overdose to report the incident to the Department of Health Services within 72 hours if possible. Once the department receives a report-- a report, it is required to report this information to the Washington/Baltimore High Intensity Drug Trafficking Area Overdose Mapping and Application Program. According to the WBHIDTA, the primary purpose of ODMapping includes: to provide a near-real-time surveillance or known suspect overdose incident across the United States and its territories; and two, to support the public safety and public health efforts to collaborate with the mobilization immediately in responding to overdose incidents. The ODMapping is beneficial for multiple different partners, from public health to public safety, can see the information about overdoses, and can coordinate the responses based on sudden increases to, to decrease the li-- to decrease the probability of life lost. For each incident reported to ODMAP, four pieces of information

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must be reported: first, the time and date of the incident; second, the location of the incident or first encounter; or three, whether the overdose was fatal or nonfatal; and four, whether, whether the responder administered Narcan to the victim. The amendment also explicitly states that overdose information reported cannot be used for any sort of criminal investigation or prosecution, and it also provides immunity for the EMS to, to make good faith [INAUDIBLE]. Finally, I, I would like to again thank Senator Vargas for his advocacy of, of this effort. This is going to be an increasingly big deal for, for Nebraskans. And with that, Mr. President, I thank you for the time.

**VON GILLERN:** Thank you, Senator Ballard. Senator Kauth, you're recognized.

**KAUTH:** Thank you, Mr. President. I'd like to ask Senator Vargas if he could yield to a couple of questions.

**VON GILLERN:** Senator Vargas, will you yield?

**VARGAS:** Yep. Happy to.

**KAUTH:** All right. Senator Vargas, so I'd like some background on, how is this fund created, and how is funding it, and then how much is in it right now?

**VARGAS:** So a little bit of history. So this, this fund in particular is funded through the opioid settlement funds. We are expected to get up to \$160 million in settlement funds over the next 16, 18 years. It's very sporadic over time. They'll be put into the fund, which will fund this grant program. And then second, we're-- we have about-- anywhere between \$7 million, \$10 million there right now. So one year, we can get, like, \$25 million; another year, we can get, like, nothing in there. But it's all non-general funds, and it'll be settlement funds that are going to be funding this fund.

**KAUTH:** OK. Thank you very much. And I would like to say I, I, I've been paying attention to what's been going on on the interstate lately. We've had several stops in the last couple of weeks that have netted hundreds of pounds of drugs coming across I-80. Senator Ballard has said this is something that Nebraskans are going to need to be paying very close attention to. And I think this is a great idea to get some of these settlement funds out and working right now. I think this also feeds into Senator Bosn's bill, to provi-- provide stiffer

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penalties for people who are using fen-- or, putting fentanyl in other drugs. We have a crisis. So I'm, I'm pleased that Senator Vargas is bringing this. And I will support this bill. Thank you.

**von GILLERN:** Thank you, Senators Kauth and Senator Vargas. Senator Vargas, you're recognized to close on the amendment.

**VARGAS:** Again, this is a technical amendment to make sure that the bill can be operational, so-- associated with the cash funds. So I ask for your green vote for AM2629 and the underlying amendment, AM2559, the committee amendment.

**von GILLERN:** Thank you, Senator Vargas. The question is, shall the amendment, AM2629, be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 37 ayes, 0 nays, Mr. President, on adoption of the amendment.

**von GILLERN:** The amendment is adopted. Senator Hansen, you're recognized to close on the committee amendment. Senator Hardin, as Vice Chair of the committee, you're recognized to close. Senator Hardin waives closing. Question before the body is, shall AM2559 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk.

**CLERK:** 37 ayes, 0 nays, Mr. President, on adoption of the committee amendment.

**von GILLERN:** AM2559 is advanced. Seeing no one in the queue. Senator Vargas, you're recognized to close. Senator Vargas waives closing. Question before the body is, shall LB1355 be advanced? All those in favor vote aye; all opposed vote nay. Mr. Clerk, record.

**CLERK:** 40 ayes, 0 nays on advancement of bill, Mr. President.

**von GILLERN:** The bill is advanced. Back to General File. We're wel-- we're-- Senator Bosn, you're recognized to open on LB137. Oh, Mr. Clerk for items.

**CLERK:** Mr. President: LB137. First of all, Senator Machaela Cavanaugh would move to indefinitely postpone LB137 pursuant to Rule 6, Section 3(f).

**von GILLERN:** Senator Cavanaugh, you're recognized to open on your motion.

**M. CAVANAUGH:** Actually, the introducer gets to open before I open.

**von GILLERN:** Senator Bosn, you're recognized to open.

**BOSN:** Why, thank you. LB137 was introduced on behalf of Taryn, AJ, Eugene, and other victims who have ended up dying from a fentanyl overdose. I would like to share with you about Taryn and the Griffith family. This story is about their daughter, Taryn, who inspired this bill that I took over for former Senator Geist. Taryn was a young mother who was trying to make better choices for her and her daughter. Every story that I've heard when I speak with parents, their children had great opportunities to look forward to. None of them knew the pill they took was laced with fentanyl. Many of them were trying to change and be role models for those around them. This bill would enhance the penalty for the delivery of a controlled substance that results in death or serious bodily injury. According to a World-Herald article, between 2018 and November of 2022, at least 256 Nebraskans died from poisonings and overdoses on fentanyl and other synthetic opioids. 138 of those deaths occurred in 2021 and 2022. This is over half of the deaths since 2018. Everyone in this body has been hearing in the news more and more about law enforcement agencies seizing fentanyl pills or fentanyl-laced pills. We can all agree that something needs to be done. LB137 is based on what the federal government does in these situations. They allow for enhanced penalties when someone knowingly manufactures or distributes a controlled substance that results in death or serious bodily injury, and that is exactly what LB137 will do. During this-- during the hearing, although I wasn't there myself, it's my understanding there was one opponent who testified in opposition of the bill. Since that time, I've worked with that individual to bring them to a neutral position on this bill by agreeing to the amendment that will be offered-- so that is a friendly amendment from the committee that caps the enhancement at a I-C felony, changing that from a I-B to a I-C. That allows for the discretion for what types of-- what the fact pattern is in those cases and better addresses the concerns that those who were in opposition to the bill had. The agreement on the amendment is the committee amendment that Senator Wayne will be introducing on behalf of the committee. Members of the body, this bill is a step in the right direction for Nebraska in terms of addressing and attacking the fentanyl crisis that we are dealing with. We have lost too many young people in this state-- and middle-aged people, quite frankly-- to the-- to a death resulting from a use of a controlled substance that is so much more dangerous than any of the controlled substances out there. The reality here is we can attack this from every angle

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simultaneously, and I've done just that. So this is not just Senator Bosn coming in and wanting to enhance a penalty to put more people in jail. That couldn't be farther from the truth. I've supported the bills from Senator Hunt that atta-- that offered clean needles for those who are recovering to provide treatment information. I've supported the treatment programs. I've been a huge advocate for drug courts. I've also-- I think we all need to support the programs where we're using Narcan and we're educating people on those types of things. This war will not be fought on my bill alone. We have got to come at this with every tool in the toolbox, and this bill is a step in that direction, allowing us to target those who are dealing drugs in our cities, in our communities to our children, to our teenagers. And, and the loss of life cannot be overstated in these, in these circumstances. I would ask you to support the amendment that will be brought on behalf of the committee, and certainly ask that you vote green on LB137. Thank you.

**von GILLERN:** Thank you, Senator Bosn. Senator Meyer has 20 guests from the Nebraska Early Childhood Policy Leadership Academy in the north balcony. Please stand and be recognized. Senator Conrad has a guest: U.S. Senator Michael Brown, here from Washington, D.C., under the north balcony. Please stand and be recognized. Senator Machaela Cavanaugh, you're recognized to open on your motion.

**M. CAVANAUGH:** Thank you, Mr. President. Good morning, colleagues. I rise in opposition, as my motion to indefinitely postpone would indicate, to LB137. I have spoken with Senator Bosn and Senator Holdcroft, who made this his priority, about my opposition this morning. I, I know it's maybe a little hard to believe. I don't want to filibuster a bill. I know, right? How-- what a different course for me. But I do oppose enhanced penalties, and I oppose them very vigorously, strongly. They have always been something that I have stood in opposition to. I don't find them to be an effective tool in the toolbox of addressing our criminal justice system. And I don't think that they're an effective tool in our work to address our opioid and just drug problems in this state all across the board. So I do stand in opposition to the bill and I-- which is why I have the motion up here today. I have spoken with Caro-- Senator Bosn about this. And she has done her due diligence and talked to all of you on the floor about where people stand. And it does appear that she has the votes that would break a filibuster. So to that end, I'm not going to take eight hours because it's going to end in the same result of moving the bill forward regardless. But I do want to take some time this morning to talk about this issue and why I oppose enhanced penalties. I have

been pretty consistent in my opposition to enhanced penalties over the years, much to the chagrin of some of my colleagues. I'm sure Senator McDonnell can attest to that. I, I think I filibustered his bill a couple of times. So I'm an equal opportunity enhanced penalties opposition. So what this bill does is creates a specific enhanced penalty around sort of a specific instance. And-- I appreciate that there are amendments coming that address some of the concerns that have been brought forth, and I very much appreciate that Senator Bosn has been willing to work with all parties to make this the best policy she possibly can. But I still believe that carving out a special enhanced penalty in specific instances is not an appropriate way to handle our criminal justice system, as we as a body in my time in this Legislature have been working continuously, really, on addressing criminal justice reform and our prison overcrowding and how we can do better by the citizens of Nebraska. And I realize that this is criminali-- an, an enhanced penalty on not the user, but the person who is giving the substance to the user. And so I appreciate that thoughtfulness in not crim-- further criminalizing addiction. But I don't think that it's going to deter crime. And if we really want to deter crime, we need to get to the root causes of crime and focus our energy on the root causes of crime. And I believe very firmly that if we are going to have a robust criminal justice reform, if we are going to address our, our criminal justice [RECORDER MALFUNCTION] of overcrowding, that we need to do something different than this. I appreciate the opportunity to try all things to try and address this problem. I just don't think that this particular thing is going to help do what we want it to do. How much time do I have?

**von GILLERN:** 5:46.

**M. CAVANAUGH:** Thank you, Mr. President. So I'm not going to take my full time. And I know that they will be announced, but I want to say hi-- because I see them coming in and sitting down-- to the fourth-grade classroom, Washington Elementary. And to Evelyn. Don't worry, you'll get embarrassed again and, and recognized again, but. I, I love seeing you all up here. And I loved hearing the questions you were asking the other Senator Cavanaugh. I think he needs to watch the movie Yes Day, for whoever brought that one up, because that's a pretty awesome movie. But I will say, if you have seen the movie Yes Day-- this is an inside conversation between me and the fourth graders, by the way. But if you have seen the movie Yes Day, one thing I would put on my list that you cannot do is drive through a car wash with the windows down. That just seems, like, too far. Too far. So I would do a Yes Day, but I would not agree to driving through a car



wash with the windows down, so. I'm so happy to see the fourth graders here. It's so nice to have students back in the, in the Capitol. And as all of us who grew up in Nebraska remember, fourth grade is that year that you learn all about Nebraska. And it's a fun project that you get to do. It's something kind of unifying in the education system across the state. I love having the students come here. I now have a fourth grader who-- don't worry, Ev, I will fully embarrass Della next week when they are here. So it's not just you that gets called out. And with that, I also want to say hi to Max. Just going to embarrass Max too. And I will yield the remainder of my time to the Chair. Thank you.

**von GILLERN:** Thank you, Senator Cavanaugh. We have approximately 18 students from Bruning Davenport School, fourth graders here, from Senator Brandt's district, in the north balcony. Please stand and be recognized. Turning to the queue. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. Pre-- Mr. President-- or, Mr. President. Colleagues, it's easy to get behind what we would deem tough-on-crime bills. It's easy to say that there is a drug problem and we have to be harder on drug dealers. I don't disagree with those statements. The problem is this bill is too broad. And there are going to be people and, and consequences of people who this bill is not supposed to wrap up but will. Now, the first red herring in this entire bill is that, currently, individuals couldn't-- can't be charged with manslaughter. That's a false narrative. If you do a crime-- so if you're out selling drugs, that is illegal. By definition of doing an illegal cri-- illegal act in which somebody dies, that is a manslaughter charge. You can ask Senator Bosn this. She's a former prosecutor. It is true. So there's already a crime that can be charged underneath the statute-- or, without the statute even in, in place. The second thing is this goes against the fundamental rule when charging a crime is called mens rea. They have to knowingly, intentionally, or recklessly-- we don't deal with "recklessly" in this bill-- but you have to knowingly and intentionally do something. So I want you to think about this. You could have bought a controlled substance, or a aspirin. You may have OxyContin for a back pill that your parents are taking. Your kid takes that out, gives it to somebody else. Now they are charged under this rule with killing somebody. Knowing that only thing they were trying to do was their friend had a back injury or a sore back and wanted to give them oxy. They don't even need to know that it has fentanyl in it. That's what I mean by overly broad. We are going to actually punish people for not knowing something's in there. That goes against the fundamental aspects of criminal law, that they have to know what

they're doing. And we're going to have a long conversation with Senator Bosn about what "connected" means because that's a brand new term in criminal justice. Typically, it only happens in a RICO where there is a connectivity. So we're adding a whole different definition to this. And it doesn't even contain "reckless." So I think it doesn't even do what we're trying to do because you still have to knowingly and intentionally know that you have fentanyl because the underlining crime has to be proven. But if you are already under-- underlining crime know that you are selling fentanyl, which could result in a death, then we already have a manslaughter charge. And there's nothing in this bill saying you can't charge manslaughter and this. So now we're going to double, triple stack. Why is this important, colleagues? Because I'm going to hand out tomorrow-- because today, I'm just going to take time until we get out of here-- where we had this similar conversation about prohibited persons and guns. And what the news article will show you is when the state decided we were going to be tough on crime, it shifted all the federal cases on guns to the state because, politically, we wanted to be tough on crime. And now we have a whole bunch of people in our prison system that we're bearing the cost for because the feds don't need to pick up the charge.

**von GILLERN:** One minute.

**WAYNE:** The fact of the matter is, if you knowingly sell a controlled substance that has fentanyl in it, you can be federally charged. And in fact, in Lincoln-- if you'll recall the two individuals who stole a whole bunch of drugs from the sheriff and State Patrol-- they were actually federally charged with committing a crime that resulted in a death, what this bill is doing. So we don't actually need this, and nor does the bill actually accomplish what they're trying to accomplish. And in fact, it's going to create more gray area of what that means. And we're going to have a conversation about the felony murder rule and the lack of men reas [SIC]. And we're going to point out the-- how this is completely consistent with that rule, which most people find to be absurd, that you can actually be charged and enhanced for a crime that you didn't even know you were committing.

**von GILLERN:** That's time. Thank you, Senator Wayne. We have 40 students from Washington Elementary in the south balcony, Senator John Cavanaugh's district. Please stand and be recognized. We have 23 individuals here from Leadership York in the north balcony, Senator Hughes' district. Please stand and be recognized. Turning back to the queue. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. I rise in support of the IPP and against LB137. I voted against it in committee. And it-- and I'll express what I said in the committee. I'm-- just-- number one, enhancing penalties is a issue, especially when we currently are going through a overcrowding crisis. We have so many issues with our prisons and our criminal justice system. I don't know if it's a good idea to further enhance penalties. Secondly, I don't know if y'all read the article I handed out a couple weeks ago, but there was a study done by UNO which pretty much said the Legislature is to blame for our overcrowded prisons. Why? Because of enhancing penalties. And you could point back to the law change to enhance penalties on gun crimes. That's a part of the reason why our prisons are overcrowded. And to this bill, I just don't think we should be criminalizing addiction. I know we're saying we're targeting the dealer, but you really have to provide more context to this. Some people who you deem as dealers are also addicts. They're dealing with addiction themselves. And I just think back to the '90s and I think back to the crack laws when this government, whether in the state of Nebraska or the United States, decided to go super hard on individuals who dealt crack or used crack. And it basically ballooned our, our prisons in this country and in this state. And I think we need to be cautious about that. I'm not saying anybody should be using fentanyl or selling fentanyl or that it's not a dangerous drug. But enhancing penalties when we already could penalize people is just not something I could support, especially because of what the dis-- disproportionate impact it's possibly going to have on my community and similar communities to mine's. That is something I also have to consider, and which is why I tried to bring a bill for racial impact statements on bills that deal with criminal justice because it's something we also should consider. But we're building a prison-- well, the state is building a prison-- and it's going to be overcrowded day one. This is going to add to that. I guarantee it. I'm not saying that anyone innocent should die because they took a pill or whatever that had fentanyl in it. I don't think that's right. I don't think that's acceptable. But I think we have to tread lightly and be cautious about changing laws just to react to something. Because we changed laws and reacted to the crack epidemic, and look what that got us. Instead of trying to get people help, we put them in prison. Instead of trying to get people help, we broke up families. Instead of trying to get people help, we didn't invest in, in those communities. We didn't try to address the root causes to why somebody would need to-- want to use a drug at all. We just was like, let's be tough on crime. Let's penalize them. Enhance penalties and lock them all up. And now we got this problem. We got

high poverty rates, prison overcrowding, and a bunch of other issues and child--

**von GILLERN:** One minute.

**McKINNEY:** --welfare. And it's all the result of overreacting. We have to be smart about this. And I don't think we should be passing enhancements, especially-- we have a task force. We're, we're going through the process of trying to figure out these type of things. If I tried to bring a bill to decrease penalties, there'd probably be a bunch of y'all standing up saying, no, we can't do it. What happens when there's examples of this law possibly having negative impacts? You think about UNL and thinking about the kids in a party and somebody passes around pills. And then you got a bunch of parents outside of here saying, y'all increased this law. Now all our kids are going to jail for felonies. I think you should think about that too. Thank you.

**von GILLERN:** Thank you, Senator McKinney. Senator Dover has seven guests from the Elkhorn Rural Public Power District Board of Directors from Battle Creek under the-- in the north balcony. Please stand and be recognized. Turning back to the queue. Senator Dungan, you're recognized.

**DUNGAN:** Thank you, Mr. President. Colleagues, I do rise today in support of M01192 to recommit-- I'm sorry-- to indefinitely postpone, and generally opposed to LB137. I want to start by saying I actually do appreciate Senator Bosn's hard work on trying to address a lot of the issues surrounding substance use disorder and a lot of the problems that surround that. I've spoken with Senator Bosn now for quite some time about this, and I think she's genuine in her desire to actually effectuate change and to make sure that we're doing everything we can to address the underlying causes of substance use disorder and to try to stem some of the problems that come from that. Where I oppose this bill is the general efficacy of what we're trying to do. Colleagues, we have to be smart when we're enacting laws. We cannot enact laws that simply make us feel like we're doing something if they don't actually accomplish that goal. And what I mean by that is I think we have to take a step back when we're talking about increasing criminal penalties and have a conversation about what it is we're trying to achieve. I've talked about this last year. I already talked about it a little bit this year, but it tends to be something that I go back to when we have these conversations, so forgive me if I'm rehashing things. But when you're talking about the criminal

justice system, there are different goals that we're trying to effectuate or that we're trying to achieve, right? There's the goal of punishment: punitive, penological goals, where the goal of the system would simply be to say, you did a bad thing. I want to punish you because it makes me feel better or it's retribution. There's the goal of deterrence, which is, we're going to enact this law to make sure that you don't do a thing down the road. There is incapacitation-- we're going to pass a law that makes it so you are unable to do the thing that we don't want you to do. And then finally, there's rehabilitation. If you did this thing, we want to make it so that in the future you don't do it again. And when we start to talk about criminal justice and what we're doing as a state, we have to be very clear about what our goal is. Because if we don't start on the same page, we're going to talk past each other. And we're going to talk past and say, I think this and I think that, but we're not even starting from the same fundamental conversation of, what are we trying to do? My belief is that most of us in this room want to create safer communities. That's what I want. I want our neighborhoods to be safer. I want safer communities. And we want to reduce recidivism. We want to make it so that people don't commit crimes moving forward. We want to make it so that, at the end of the day, there's less people being harmed in our communities, there's less people having a substance use disorder, there's less people overdosing. We all want those things. So when we look at bills like LB137, we have to ask ourselves, does this accomplish that goal? And colleagues, I would posit to you that it does not. What we know about LB137 is that it enhances a penalty if you meet a certain set of criteria. I anticipate talking more about that as we go on. I think we're going to have a little bit of time here. But we also know that deterrence-- the idea that if we increase the penalty to something, a person is less likely to do it-- has very, very little research to support that that actually works. So the idea that somebody's going to be deterred by virtue of us increasing this penalty I guess assumes a couple of things. One, it assumes somebody who is committing this crime knows what the penalty is. It also assumes that somebody who's going to commit this crime in the future knows that we have now increased it. And colleagues, I, I can tell you from personal experience in working in the criminal justice world and being an attorney, people don't know what these sentences are. People in the community have no idea what the ramifications are--

**von GILLERN:** One minute.

**DUNGAN:** --for the thing-- thank you, Mr. President-- for the things that they do. And so the assumptions that we have to make in order for

the deterrence here to even happen just simply I don't think are backed up by research or data. People don't know those things. In addition to that, even if they do know those things, the research has shown time and time again that, generally speaking, there is very little information or data to say that somebody's going to be deterred by an increased penalty. And so if what we're trying to accomplish here is a safer community, if what we're trying to accomplish here is less people committing this crime, increasing the penalty is not going to have that effect. There are other ways that we can do that, and I think we're going to talk about some of those, but this is not that way. And so I, I understand the notion that we are trying to prevent these things from happening. And I understand that there's incredibly sad stories that none of us want to see repeated. But increasing this penalty is not going to achieve that goal. And we have to be smart about what we're doing and we have to be intentional about--

**von GILLERN:** That's your time.

**DUNGAN:** --what we're doing. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Dungan. Senator Conrad, you're recognized.

**CONRAD:** Thank you, Mr. President. Good morning, colleagues. I-- unfortunately for you all and for Nebraska, there happens to be a lineup on General File today of a host of measures that I'm interested in. I was not planning to speak this much this morning, but it's just how the agenda happened to shake out. So I want to thank my friend, Senator Bosn, for her thoughtfulness in approaching this bill and her colleagues and having hard and authentic conversations with those of us, including myself, who she suspected might be opposed to this measure on a policy basis. And I think that takes a ton of courage and intention, and I'm grateful for her hard work and collegiality in taking up and navigating re-- what, what could be very fraught conversations in such a thoughtful way. That being said, whether it was Senator Bosn or another friend in the body who is bringing forward this measure, I would stand opposed. And that's for the simple reason that we, we've studied the issue over and over and over in Nebraska, including very recently. And we know that there is a clear connection from the state house to the prison pipeline. Every single time we criminalize behavior under our code, every single time we enhance penalties under our code, it exacerbates mass incarceration and prison overcrowding, and this measure is doing just that. It, it, it is not necessary because the behavior that Senator Bosn and others are

concerned about is already criminalized under our code. It is already criminalized with significant penalties under our code. This is an enhancement for existing criminal penalties. And I, I think that we have to be clear-eyed and look at what the data and the research shows us that these kinds of criminal enhancem-- enhancements, no matter how well-intentioned, exacerbate mass incarceration. And we know that attendant to mass incarceration is racial injustice. We know attendant to mass incarceration is the fact that we are taxing ourselves to death, including on the local level, to fund mass incarceration. And so we have to step back from the brink at some point. And that's exactly why we've convened as part of LB50 another, yet another, sentencing reform task force to get a handle on our criminal code and to ensure that we update it following the successful models from our sister states and the federal government, including many red states that have a similar political landscape to Nebraska, and that we update our code so that we have less people entering our prisons, we have less severe sentences, and that we can truly keep our focus on advancing our shared public safety goals when there are true public safety threats with the limited resources we have available. But by making additional enhancements on already, already-- on behavior--

**von GILLERN:** One minute.

**CONRAD:** --that's already-- thank you, Mr. President-- already covered under our criminal code, exasper-- it exacerbates burden on the taxpayer. It exacerbates mass incarceration. It exacerbates racial injustice. It exacerbates prison overcrowding in Nebraska. And it is the wrong direction to head. I am hopeful that we'll be able to have a continued thoughtful debate about this measure if it moves forward. This is not a reflection on Senator Bosn in any way, but is part of a longstanding, challenging public policy debate that we have to be thoughtful about and come to terms with. We cannot continue to create new penalties and enhance existing penalties and expect different results when it comes to mass incarceration. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Conrad. Senator Wayne, you're recognized.

**WAYNE:** Thank you, Mr. President. Colleagues, I can sit here and argue and say things, but, one, it's getting close to lunch and, and, two, we can just ask the introducer of the bill some questions or anybody who supports the bill. Colleagues, it's-- again, let me say this. It's easy to say, I just support tough on crime. But I think you need to actually read the language to understand some of the problems with the

language. For example, on page 7, the use of any controlled-- lines 4 through 6-- the use of any controlled substance connected with such violation resulting in seriously bodily injury to or the death of another person. The word "connected." That's not in our criminal code, and there's a reason for that. There has to be a direct or proximate cause to some kind of violation. Underneath the connected theory, if I give Senator Erdman oxy or a controlled substance-- testosterone or too high of something else, whatever, pill-- and he decides to cut that and put fentanyl in it and sells it or gives it-- doesn't even have to sell it-- gives it to his friend, Senator Bostelman, I can still be charged because it's connected. I'm the one connected to him who gave him the drug. He's the one who actually may be the bad actor of cutting the drug. I could have actually did it legally, but let's just say I didn't. And that connection can keep going down and down. That's why when you have bills that deal with injury, there's always proximate cause, or directly related. Because if I'm not the one causing the bodily injury, how can I be held accountable for the person next to me who I may have gave the pill to, but then he's the one who added fentanyl? So now I'm connected to this crime. That's how broadly this can be interpreted. And believe me, that's how our Supreme Court will interpret it. So we're not even going after, necessarily, I would say the drug dealer, per se, in this situation. We could be going after anybody who's connected to it, which is concerning. The other problem I have with this bill and the way it is-- if you look right above that section on page 7, you talk about people who knowingly and intentionally possessed a firearm. It's something they know they are doing. This actually could apply to a mother or father who has a drug and they give it to their kid for pain. Now, theoretically, the prosecutors may or may not charge them, but that's how broad this is. And so let me be clear: there has to be an underlining crime. That's why she's calling it an enhancement. They have to prove something. So we're already have something criminalized. They can already be charged with manslaughter. We're going to create a new enhancement that is very broad, that can apply to people who are not actually involved in the drug exchange. That, that, that's how broad this is. And so to my conservative colleagues, when you talk about government overreach, this is a hammer that is trying to hit, what I would say, a leaf. And we're just going to keep swinging and swinging and swinging and we're not actually going to solve the problem and actually change what we're trying to do here, which is stop drug use and fentanyl use. If we wanted to go after drug dealers, there would be an approximate cause there. Instead, this captures everybody. Two friends hanging out at a party that-- they don't know



any different. They just do a drug. Rightfully, wrongfully, I'm not saying we should do that. But their intention is not, not to kill anybody. That's why there's a manslaughter charge. Because it takes it into account--

**von GILLERN:** One minute.

**WAYNE:** --that that wasn't their intention. If you believe you should be convicted of a crime without even knowing that you're convicted-- that you're doing that crime, then I guess support this bill. But that's never what this government was built on. It sure wasn't what America was built on, that we're going to convict people of crimes that they don't know they're doing just because they're in another illegal activity, which we've already got a crime. It's just overly broad. And we're going to have some more Q&As. I see it's almost 11:30. Speaker may want to go till noon, and I'm glad to go till noon. And I can hand out a article and keep talking about this. But colleagues, this is very broad, and we should do something about it being so broad. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Wayne. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. Still rising opposed to LB137. This is a question I asked the CJI, CJI Task Force a couple years ago when we were initially meeting and we were discussing a-- talking about charging people with drug addictions with felonies. And some people in the room felt like that would get them to get on the right track. And for me, that logic just doesn't make any type of sense. So we're going to charge people with addictions with felonies and hope that they improve. If anybody has dealt with a family member that has dealt with addiction, you know for a fact it doesn't matter. They got to figure it out on their own, and it's a different path. And just because they go to jail or prison, it doesn't mean that they're not still addicted to whatever substance they're addicted to. So that doesn't help. Then I brought up the conversation about, you know, some of them saying we need tougher laws or we need to be tough on crime. Well, if my calculations are right, the United States of America and the state of Nebraska has probably been trying to be tough on crime for 30-plus years. I would ask you, has that worked? Has that approach worked? Has the punitive approach to addressing crime worked? Honestly. Ask yourself, has it worked? Because if it worked, I don't believe we would be-- this state would be building a \$350 million-plus new prison if being tough on crime actually worked. The police don't

prevent crime. They just sort of maybe solve it. County attorneys just prosecute crimes that come before them. So who's preventing crime? We need more resources to crime prevention. We need more resources to substance abuse treatment and those type of things. Address poverty. Being tough on crime just to look good and feel good about yourself is not really working. It hasn't worked. And if anybody could show me any data that being tough on crime has been the greatest thing in America, I would love to see it because the taxpayers are paying for a \$350 million prison because the state decided to be tough on crime. I bet they would love \$350 million for property tax relief or \$350 million for our schools. That would be great. And again, I point you back to this UNO study. If you haven't read it: the Legislature is to blame for the state's overcrowding crisis because we enhanced penalties. We enhanced gun crime penalties, like, a decade ago and, you know, see increase of people with enhancements in jail right now because of gun crimes. Not saying they should have had a gun. I'm just saying your enhancements boosted the overcrowding crisis. It is part of the cause for building the new prison. But honestly, honestly speaking, what are you going to do when there's a party on UNL's campus-- in my hypothetical, they're, they're partying, somebody--

**von GILLERN:** One minute.

**McKINNEY:** --starts to pass around pills because that happens at college parties-- as much as we don't like to believe it-- but it does. Let's say one or two of those kids end up seriously harmed or even dead. And then the parents of the kid that passed a pill comes and say, hey, my kid is not a felon. My kid didn't know what they were doing. They were out partying and drinking. And now they have a felony and going to prison. Somebody's going to come back and say we should change that law. But once you pass a law in this state, it is hard to take it back, especially a crime. It is almost impossible. And you got to keep fighting and fighting and you got to keep having study after study and you still don't get, get the change that you need. So I would tell the body to tread lightly and be cautious because once you do something, it's hard to take it back. Thank you.

**von GILLERN:** Thank you, Senator McKinney. Senator Dungan, you're recognized.

**DUNGAN:** Thank you again, Mr. President. Colleagues, I, I actually really enjoy talking about these things. Not that they're not incredibly serious, but I think these are really interesting topics to talk about. So I apologize if I, I get a little bit in the weeds with

some of these penalogical or, or puni-- punitive goals. But I think they're important to talk about it. And it goes exactly to what Senator McKinney was just talking about. And it's that we have to be smart about what we're doing and look at whether or not the laws that we're implementing actually have the effects that we want them to have. And when you just keep running your head up against a brick wall time and time again and you don't see any change, we have to do something differently. You know, since the '80s and '90s, we have seen just this cumulative effect of our continuous efforts to hypercriminalize things and increase penalties. And we've not seen a reduction in the offenses, and we certainly haven't seen a reduction in the population of our prison. And when I talk to people about our overcrowding issue, everyone agrees that our prisons are overcrowded. Where we disagree is about what to do about it. And so we can all agree, I think-- based on the conversations I've had with colleagues in here, left, right, center-- that our prisons are too full. And laws like what we're trying to do with LB137 simply don't address that problem. Going back to the idea of deterrence, right, the idea that if we do implement LB137, it's going to deter somebody from, from committing this crime. There's two separate and distinct theories of deterrence when you're talking about this. There's specific deterrence and general deterrence. Stick with me on this. It's actually interesting. Specific deterrence is: if we punish a particular person harshly enough, the argument is that they're not going to commit that crime or other crimes again. General deterrence is: if we implement a penalty that is super strict, people, broadly speaking, are not going to commit that crime. Both of them are flawed. There have been numerous studies that have been done with regards to specific deterrence, seeing whether or not sending a person to jail reduces the chances that they're going to break the law in the future. I mean, this is a really easy thing to study. Is somebody going to jail for longer periods of time reducing the likelihood that they then commit a crime afterwards? Meta-analyses of hundreds of studies show that the answer is no. Sending somebody to jail or incarcerating somebody for a longer period of time either has no effect on whether or not they're going to continue to commit a crime in the future or commit another crime or it has a negative effect insofar as it actually can increase recidivism rates. When people are sent to prison for long periods of time, criminology and the ability to commit crimes in the future often increases. And so the entire idea that there's a specific deterrence to sending somebody to jail for longer because they did something, it simply doesn't hold up to the data. And so if we're going to be making decisions about what we're going to do about our prison overcrowding

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here in Nebraska, we have to do it based on numbers. I went to a conference this summer that was attended by people from every single state, and it was prosecutors, defense attorneys, judges, administrative officials, and state legislators from every single state. And it was nonpartisan. We had Republican governors there. We had Democratic state legislators there. And the thrust, the entire point of the conference is we have to do something about our criminal justice system based on data, not just based on what feels good. And one of the things that I took away from that conference and, and talking to a number of my colleagues on, on both sides of the aisle, again, was that we really got to start drilling down to what's going to make the largest impact here. And my concern--

**von GILLERN:** One minute.

**DUNGAN:** Thank you, Mr. President-- is that LB137 is going to have the opposite effect of what its intended goal is, is that we are going to see more people spending more time in custody. And not the people who need to-- and I think we can talk about that more here too. Not kingpin drug dealers that we're all imagining who are sitting up in some penthouse and dealing these drugs to people, but users themselves going into custody, spending longer time in custody, not getting the benefit of treatment that they actually need, and then increasing recidivism on the back end. We need safer communities, not more dangerous communities. And I have a concern that LB137 will have an adverse effect on that. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Dungan. Senator Wayne, you're recognized. And this is your third time.

**WAYNE:** Thank you. Will Senator Bosn yield to a question?

**von GILLERN:** Senator Bosn will yield?

**BOSN:** Yes.

**WAYNE:** Senator Bosn, under the scenario you described when introducing this bill, could that individual be charged with manslaughter?

**BOSN:** I don't remember the exact fact pattern that I gave you this morning because I've had multiple conversations. But your argument, if I'm understanding it, is that, right now, you could be charged with the delivery-- which is an unlawful act-- and manslaughter because it resulted in death. Is that what you're asking?

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**WAYNE:** Yes.

**BOSN:** OK. So I do not know a solid answer to that. I suspect you believe the answer is yes, and you very well could be right. Here's where I think that's a problem. Your argument is for this to be charged as a dealing of drugs as well as a manslaughter-- and a manslaughter has a penalty that is 20 years to life. And as a compromise on this bill, my bill puts it at 5 years to 50. So it's a reduced penalty. So I'm conc-- confused why you would rather have someone charged with a manslaughter instead of an enhancement that more appropriately addresses the underlying offense. I, I, I maintain that this is the proper solution to that. But you could be right. It could be charged also as a manslaughter.

**WAYNE:** So are you familiar with State v. Buchanan, where the defendant was convicted of delivery of a controlled substance and manslaughter--

**BOSN:** No.

**WAYNE:** --because of the death of his friend?

**BOSN:** I am not familiar, but I'm happy to read it.

**WAYNE:** So under-- what's a-- what's the penalty for delivery of a controlled substance?

**BOSN:** Depends on what the controlled substance is.

**WAYNE:** We'll, we'll use meth.

**BOSN:** OK. It's-- gosh, now you've caught me. Let me look. Do you know the answer or are you asking because you don't know?

**WAYNE:** No, I'm a-- I'm asking. It's, it's a--

**BOSN:** So meth, depending on the amount, can be up to a I-D if it's a large enough quantity, I believe.

**WAYNE:** So those can run consecutively, so they could actually be charged more, as you just stated earlier. But you said you weren't familiar with that. Weren't there some people recently federally charged with distribute cocaine and fentanyl resulting in death here in Lincoln?

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**BOSN:** There could have been. I don't know when it was, but I, I won't argue with you.

**WAYNE:** So they could be charged in the state right now. They could be charged at the federal level. So why do we need new laws on the books?

**BOSN:** Well, as I said, I think this is the appropriate solution to addressing the fentanyl crisis that we're dealing with in our communities. I think that this is a compromise that got us to a place where there were no opponents on the bill in terms of trying to address the issues that we're seeing. I think when we have-- I think it is the responsibility of the Legislature to respond when we see a significant problem.

**WAYNE:** So then--

**BOSN:** And in my opinion, the death of several people as a result of fentanyl is a serious problem.

**WAYNE:** So if you believe this is the proper charge, would you-- and proper thing to convict somebody of in this situation, then would you be amenable to an amendment that says that you could not charge controlled substance delivery in addition to manslaughter if you make this charge? So if this is the proper one, then this should be the only charge and they shouldn't be able to stack a manslaughter charge on top of this charge. Would you be amenable to that?

**BOSN:** I'd be willing to have that conversation because I understand what you're saying, and I, I think that makes sense. You've never presented me with that before that I can recall, but.

**WAYNE:** No. But if-- again, if you say this-- you stated publicly this is the right charge, then this should be the only charge. Because right now, underneath your bill, they can still be charged with manslaughter--

**von GILLERN:** One minute.

**WAYNE:** --and they can still be charged with distributing of cocaine or a controlled substance and charged with this. So there would be actually three charges stacked instead of just one charge. But right now, it could only be two. But with this, it could be three. So why am I defending this? Because right now, there's only possibly one to two charges. And this would add a third charge because you're not removing the two charges. Does that make sense?

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**BOSN:** Except for this isn't a charge, it's an enhancement. But other than the fact that it's not a separate charge, I understand what you're saying.

**WAYNE:** So that, that would be one thing. And did you have time to look at the word "connected?"

**BOSN:** I have connected with the word "connected."

**WAYNE:** So can you explain your definition when this-- because eventually, this will go to the Supreme Court. They'll look at the legislative history-- what, what you believe "connected" means? What's the proximity and the direct, direct result in "connected?"

**BOSN:** So I don't have a specific definition for you. I think "connected" is defined. It's--

**von GILLERN:** That's time, Senators.

**BOSN:** --a common term. Thank you, Mr. President.

**von GILLERN:** Thank you, Senator Wayne and Senator Bosn. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President. Would Senator Wayne-- I can yield my-- I'll yield my time to Senator Wayne. Thank you.

**von GILLERN:** Senator Wayne, you're yielded 4 minutes, 51.

**WAYNE:** Would Senator Bosn continue the questioning?

**von GILLERN:** Senator Bosn, will you yield?

**BOSN:** Yes.

**WAYNE:** So back to the word "connected." What, what, what does that mean? Does Person A, who gives or sells the controlled substance, gives to Person B, and Person B adds fentanyl, fentanyl, and Person B gives to C, is A still connected under your definition?

**BOSN:** I would disagree with that use of the word "connected."

**WAYNE:** Could they be charged underneath your bill? Or, or do you believe your, your intent of this bill is for Person A to be charged?

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**BOSN:** Give me your fact pattern again. A, deals a oxycodone, B, cuts it with fentanyl, and C, dies from it?

**WAYNE:** Correct.

**BOSN:** The intention of my bill would not be aimed at Individual A, and I don't believe that the use of the word "connected" gets us there. But that might be just me disagreeing with you-- respectfully, albeit.

**WAYNE:** No, I think it's important that we figure out what the word "connected" means. So what would be your definition of "connected?" And if you could also give a fact pattern to meet that definition that you're going to give.

**BOSN:** OK. So you're talking about subsection (ii)--

**WAYNE:** Yes.

**BOSN:** --or-- two i's, (ii), on page 7--

**WAYNE:** Yes.

**BOSN:** The use of any controlled substance connected with such violation resulted in serious bodily injury to or the death of another person. OK. So we're talking about someone who is delivering drugs. So this would be an individual who is selling-- in, in the example that I gave in my opening-- I believe it was a Percocet to someone at work who was complaining of back pain. That Percocet had been cut with fentanyl. And the individual who received that fentanyl, Taryn, died as a result of taking the fentanyl that she believed was a Percocet.

**WAYNE:** And so doesn't matter whether the person who is giving or selling the controlled substance believe it's Perco-- Percocet-- is that what you said? So it doesn't matter what they believe. Or they know.

**BOSN:** So that's the difficulty with not being a pharmacist and dealing drugs.

**WAYNE:** Not necessarily because you can take a prescription out of a bottle and think it's the same one from Walgreens, but it could be something different. You don't, you don't know. So you could give it to yourself or you could give it to a friend. But my question is, back to-- that person who gives or sells that drug does not have to know that that contains a deadly chemical like fentanyl?



**BOSN:** The person who is dealing the drugs to someone else, if those drugs are illegal, that's the risk that that person bears when they're subjecting another person to a controlled substance and they are not a medical provider who's giving it to someone in a hospital or a pharmacist who's filling a prescription behind the raised counter that heightens them up a foot and a half.

**WAYNE:** Thank you. So you necessarily believe that-- I'm asking you generally, a philosophy question here-- that mens rea is not needed, that you don't need to know something when committing this crime? Does that carry over to other-- is your belief that should carry over to other crimes too?

**BOSN:** So I think what you're-- if I understand what you're asking, is the situation in which I don't know that there's fentanyl in the drug that I'm giving to someone else. And so your position is that I didn't have the appropriate mens rea to intend to give you the fentanyl. I just intended to give you the Percocet. And it's unfortunate that it happened to be laced with fentanyl.

**WAYNE:** But underneath your, underneath your fact--

**von GILLERN:** One minute.

**WAYNE:** --underneath this bill, it doesn't have to be fentanyl. Somebody can just overdose. Somebody can have an allergic reaction to the controlled substance. It doesn't even have to be an illegal drug, per se. It just the, the controlled substance. They could actually have an allergic reaction to the aspirin-- or, allergic reaction to the aspirin and die. And they would be charged with homicide because it's a controlled substance violation-- not charged, enhanced, to this level.

**BOSN:** I was unaware that aspirin is a controlled substance.

**WAYNE:** No, I'm saying that they could-- but-- no, because oxy and other things have aspirin in it. So it could be a-- so even the controlled substance itself is illegal, it isn't something-- it could be exactly what they gave it to somebody thinking it was just oxy. And that individual can have a bad reaction to the oxy. So it doesn't have to be, like, fentanyl. It could be anything that's in a controlled substance, and it could be that exact controlled substance.

**BOSN:** Sure. Theoretically, it could be the underlying oxycodone or Percocet in our example.

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**WAYNE:** OK. And now--

**von GILLERN:** That's time, Senator.

**WAYNE:** Thank you.

**von GILLERN:** Thank you, Senator Wayne, Senator Bosn. Senator McKinney, you're recognized. And this is your last time on the mic.

**McKINNEY:** All right. Thank you, Mr. President. Now, I'll point you guys to the fiscal note. An important note from the Nebraska "Department of Punitive Services" states that LB137 could increase the prison population and length of stays. That's something to consider. Also, it says LB137 pro-- provides for penalty enhancement for a, a controlled substance violation resulting in serious bodily injury or death. This bill could increase the length of stay of the persons in prison, thereby increasing the overall prison population. This specific amount of impact is indeterminable, but it's very possible. What I was talking about earlier. When you enhance penalties, you increase the population of prisons. We already know this prison that's being created, which cost taxpayers \$350 million, will be overcrowded day one. So I would think it's a fair assessment to say it is highly likely that, if passed, LB137 will add to the prison overcrowding crisis, which means one thing: either the "Department of Punitive Services" is going to continue to keep NSP open-- which they said needed to be closed because it was in such disarray. I do have a bill to, bill to demolish it, but people don't want it demolished because they want to keep it open. But if they don't keep NSP open and I'm successful in getting it demolished, that means that the new prison will have to be expanded, which means the department is going to come back and ask the Legislature for more money. That means we will be spending basically a half \$1 billion on prisons. And I'm not even talking about operational cost. Just think about that. That is something to consider. We have to be careful when we pass these laws. Because I'll point you back to the UNO study: the Legislature is to blame for the overcrowding crisis because we enhanced way too many penalties in the past and we have too many people staying in for long periods of time because of it. I'm not saying that people should be doing drugs. I'm not saying people should be selling drugs or that people should be harmed or die because of drug usage. But I'm saying we need to be cautious. One, we need to think about the fiscal impact on the state. And two, we need to think about, are we criminalizing drug addiction? Because not everybody that is going to hand their friend or give a pill or whatever is a dealer. They're addicts. They

don't care about the laws. So just saying we're going to increase penalties on addicts makes no sense. We have to be careful about this. I'm, I'm just astonished. I, I mean, the average daily population for design was 147% of de-- design capacity. The per diem costs for each incarcerated individual was \$28.38, or \$10,000 per year-- above \$10,000 or whatever. But we're not talking about when they stay in longer--

**von GILLERN:** One minute.

**McKINNEY:** --get older, those costs increase. There's a lot of factors that we have to think about in just trying to pass a bill. Because there is a problem with fentanyl. I admit that. But this law doesn't solve the problem. Increasing laws on crack didn't stop crack addicts from, from, from doing crack. It didn't stop people from selling crack. It didn't. It just filled the prisons up. That's all it did. And that's something you should consider. Thank you.

**von GILLERN:** Thank you, Senator McKinney. Mr. Clerk for items.

**CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Erdman to LB1218; and Senator Machaela Cavanaugh, series of motions to LB421; Senator Clements, amendment to be printed to LB1067; additional amendments and motions to be printed to LB137. Your committee on Education, Mr. President, chaired by Senator Murman, reports LB1052 to General File with committee amendments. Additionally, notice of committee hearing from the Health and Human Services Committee as well as the Judiciary Committee. That's all I have at this time.

**von GILLERN:** Speaker Arch for an announcement.

**ARCH:** Thank you, Mr. President. We'll be handing around a memo and, and making sure your staff gets a copy as well. And it's concerning consent calendar. I've had a number of requests and questions on consent calendar. So now that all the priorities are in, I can now address the issue of consent calendars. We will have what I anticipate two to three small consent calendars in, in the near future here, so. The, the memo details, in great detail, the qualifications for what, what can be put on to a consent calendar. And it will be-- you will be submitting requests to me. And make sure that your staff and yourself are, are familiar with the qualifications for that. But just to let you know about timing. First, first round of requests: I have a deadline of Wednesday, February 28 at 5 p.m. Second round of requests: the deadline will be Thursday, March 7 at 5 p.m. But again, there's a

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lot of detail in the memo, and I would encourage you to take a look at that. But we will have a couple-- two, maybe three consent calendars coming up. Thank you, Mr. President.

**von GILLERN:** Thank you, Speaker Arch. Mr. Clerk for items.

**CLERK:** Thank you, Mr. President. Amendment to be printed: Senator Wayne to LB137. Name adds: Senator Albrecht to LB137, LB399, and LB541; Senator Holdcroft, LB853; Senator Albrecht, LB934, LB1004, LB1027, and LB1037 [SIC-- LB1035]. Senator-- LB1035, excuse me. Senator Holdcroft, LB1037; Senator Conrad, LB1041; Senator Albrecht, LB1126, LB110-- LB1301, LB1306; Senator Conrad, LB1367; Senator Albrecht, LB1394, and LR277CA. Announcement: the AG Committee will have an Executive Session upon adjournment in room 2022. Agriculture Committee, Exec Session upon adjournment in room 2022. Finally, Mr. President, a priority motion: Senator Halloran move-- would move to adjourn the body until Thursday, February 22, 2024 at 9:00 a.m.

**von GILLERN:** Question is, shall the Legislature adjourn? All those in favor say aye. All opposed say nay. We are adjourned.