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Floor Debate
February 28, 2008

[LB464 LB606A LB606 LB710 LB797 LB822 LB912 LB914 LB937 LB938 LB952 LB962
LB1001A LB1001 LB1014 LB1049 LB1096 LB1147 LR4CA LR240 LR241 LR242
LR252 LR253 LR254]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the thirty-third day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Harry Riggs, from First Baptist Church, Senator Avery's district. Please rise. []

PASTOR HARRY RIGGS: (Prayer offered.)

SENATOR LANGEMEIER: Thank you. I call to order the thirty-third day of the One Hundredth Legislature, Second Session. Senators, please record your presence.

SENATOR McDONALD PRESIDING

SENATOR McDONALD: Senator Harms, would you check in? Thank you, Senator Harms. Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Madam President.

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

ASSISTANT CLERK: I have no corrections this morning.

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

ASSISTANT CLERK: Two items, Madam President. I have a report of registered lobbyists for the current week, and a report from the Department of Education relating to the State Rehabilitation Council 2007 Annual Report. (Legislative Journal pages 733-734.)

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

ASSISTANT CLERK: Madam President, LB962, introduced by Senator Preister. (Read title.) The bill was read for the first time on January 15 of this year, referred to the Government Committee. That committee reports the bill to General File with no committee amendments. [LB962]

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SENATOR McDONALD: Senator Preister, you are recognized to open on LB962.
[LB962]

SENATOR PREISTER: Thank you, Honorable President, friends all. I rise to introduce LB962 to you this morning and appreciate your attention. This legislation ensures citizens the right to speak at public meetings under the Open Meetings Act. It clarifies that a public body could not require a member of the public to make a request prior to that meeting to be placed on the agenda in order to comment on an agenda item. It does not impair a public body's existing statutory authority to adopt and enforce reasonable rules regarding the conduct of persons who wish to testify during public meetings. It merely prohibits a public body from imposing this burdensome requirement on citizens. The basic tenet of our democracy is government by and of the people. If we erect barriers for citizens' involvement, then we frustrate rather than encourage citizens from participating in the formation of policies which affect their lives. As a result, citizens feel disenfranchised and become disillusioned and mistrustful of their government. As elected officials, I believe it is our duty to invite and encourage the public to share their concerns, whether they support or oppose our actions. Without citizens' voices and their votes, we lose a key component of representative democracy. In the committee there were no opponents who testified to the bill. There were a number of proponents. Many of them were representing organizations, but there were also regular citizens who came in. Those regular citizens had concerns that were expressed at a hearing that we had before the Government Committee last November. I have asked the pages to hand out to you and should be on your desks currently an editorial from the World-Herald that outlines some of the issues that were raised in the hearing, most of which I'm not even coming close to addressing in this legislation. This is only a component that is essentially agreed to by the committee, by the affected political entities, and to my knowledge, no one has real opposition to what we're trying to do. It simply says that you can't require a citizen to come in, in advance, and request to be put on the agenda to speak, and then have to wait for a determination whether or not you will allow them to speak when there is a normal public hearing opportunity. So if you have a normal public hearing and the public is invited to speak, you can still do all of the reasonable rules and regulations regarding how they speak, how long they speak, the content, if they're out of order. All of that control still remains and rests fully with that public body. We're taking none of that authority away from the public body. This simply says that a member of the public isn't required to come in and be put on the agenda in advance, prior to that regular public hearing. I believe that is all that I have to say. I would mention that the committee saw that it did not need amendments. The committee has heard the issue in the past and heard it again in the hearing this past fall, and heard some of the limited testimony again. You can read for yourself the editorial from the World-Herald to see some of the concerns. Again, this does not address all of those. I would hope in the future that others would take interest with the open meetings, open records act, after I'm gone this year, and would continue looking at it. I know there are several people in here

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who do have concerns, and I would certainly entertain any questions. This will conclude my opening. Thank you. [LB962]

SENATOR McDONALD: Thank you, Senator Preister. Senator Pahls. [LB962]

SENATOR PAHLS: Madam President, members of the body, I agree totally with Senator Preister's concept, this part of the open meetings law. I just have a question on another part of the open meetings agenda that I would like to request that Senator Preister give me a moment of his time. [LB962]

SENATOR McDONALD: Yes, Senator Preister, would you yield to Senator Pahls? [LB962]

SENATOR PREISTER: Yes, I would be glad to. [LB962]

SENATOR PAHLS: Thank you, Senator. Of course I agree with you. Here's the concern I have, because we've talked about the open meeting laws in the past. Here's an example. I do want just to make clarification and make sure that I understand what's going on. I have pulled up for the last...January 8, January 15, January 29, and February 5, part of the agenda of Douglas County. And this is...it's always the same, or it always has the same words--Executive Session, per statute, for the purpose of discussing labor negotiations, personnel matters, and litigation. It's always the same, I was just wondering, could you address that? Do you know anything about that, Senator? [LB962]

SENATOR PREISTER: Senator Pahls, I have not had much opportunity to attend the Douglas County Board meetings. The items that you list are specific items that they can go into closed session to discuss, and the Open Meetings Act does have set specifications--and I don't have a copy of it here, I'm sorry--of things that they can go in to discuss. If they're using those same things, kind of automatically or carte blanche to cover anything, then that would be inappropriate. If they were discussing anything else in closed session except those things, they would be in violation of the Open Meetings Act. If they are talking about labor negotiations, which is one of the things you identified, if they are dealing with personnel matters, then that is what they should go in for. It would be more helpful if they could be a little more specific in identifying those things, rather than being so vague and general, which was the subject of a bill that we got passed and that you helped with a couple of years ago. [LB962]

SENATOR PAHLS: Thank you. I'm just trying to bring this up to just renew or refresh our memory. I still have a concern about the executive session, that we really play by the rules, because in the past at times I think we have not. Again, I thank you, Senator. Thank you, Madam President. [LB962]

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SENATOR McDONALD: Thank you, Senator Pahls. Senator Erdman, followed by Senator Gay. [LB962]

SENATOR ERDMAN: Thank you, Madam President. Would Senator Preister yield to a question? [LB962]

SENATOR McDONALD: Senator Preister, would you yield to Senator Erdman? [LB962]

SENATOR PREISTER: Gladly. [LB962]

SENATOR ERDMAN: Senator Preister, I have a scenario that I'd like to share with you that I think may be addressed by your bill, and then you can help me understand whether it does or it does not. If I have a constituent in one of my communities that would like the town council to consider an issue, and they have gone to the town council and the town council refuses to place it on the agenda and refuses to take up the issue at all, how would that be treated under your proposed language, if at all? [LB962]

SENATOR PREISTER: Senator Erdman, this would not really cover that, because we're just saying that they can't force somebody to come in, in advance, to be put on the agenda. But all of those rules and regulations that they now have the authority to put in place that sometimes impede and hinder and prevent citizens and frustrate citizens would still all be in place. We're not changing any of those rules. So this really wouldn't address the issue that you're talking about. [LB962]

SENATOR ERDMAN: Okay, so specifically, this simply allows more flexibility for people who find out about a hearing at a...or a meeting at a late date, to be able to have access to public comment. [LB962]

SENATOR PREISTER: That is absolutely correct, because some bodies have required people to come in a week in advance, put their name on a request form, and say, I want to address this issue that you've got a hearing on. And then that public body takes whatever time they want, may not even get back to the individual with an affirmative okay to speak on that item, when the rest of the public could have the opportunity. And if somebody didn't even know that that item was going to be on the agenda until, say, a day or two before, they just wouldn't have any other opportunity. So this is to allow access where there is currently access. We're not expanding access, just making sure that what is currently available is available without that additional impediment. [LB962]

SENATOR ERDMAN: And just another follow up. Under your bill as you've explained the parameters, nothing in current law prohibits them from providing this accommodation now. This would simply expressly provide this accommodation. In cases that I'm aware of, you show up to a town hall, school board meeting, any entity that is subject to the Open Meetings Act, they look around the room and they say, what

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issues do you want to address? They can do that now. This would simply make that a common practice or an opportunity for whoever would show up, as opposed to having the advance notice. [LB962]

SENATOR PREISTER: That is correct. You accurately described it, Senator Erdman. This is putting in statute what we currently expect to be done and what most bodies currently do. It's just reinforcing that this is the citizens' right. [LB962]

SENATOR ERDMAN: Okay, thank you. [LB962]

SENATOR McDONALD: Thank you, Senator Erdman. (Visitor introduced.) Proceeding with debate we have Senator Gay, followed by Senator Hansen. Senator Gay. [LB962]

SENATOR GAY: Thank you, Madam President. I rise in support of this bill. I think it's a good bill, and I think I understand the reason why some of the councils or whoever was doing this were making people sign up for their convenience, not so much for the public's. If Senator Preister would yield to a question or two? [LB962]

SENATOR McDONALD: Senator Preister, would you yield to Senator Gay? [LB962]

SENATOR PREISTER: Certainly. [LB962]

SENATOR GAY: Thank you, Senator. Senator Preister, I assume this was some councils or...I didn't hear the testimony in committee. But some councils you get that citizen that likes to interject their opinions on a lot of different issues, and they have every right to, and I believe they should. Does this bill...was this intended to help that citizen? Even though sometimes, you know, you're at a long meeting and somebody wants to speak again and again and again, were these barriers set up to kind of prevent them from doing that or just to be a nuisance, in your view? [LB962]

SENATOR PREISTER: Senator Gay, some of the people who came in to testify at the interim study that we did expressed those frustrations, and there's a handout on your desk that's from an editorial in the Omaha World-Herald, who has been very supportive of the open meetings and open records act. And it outlines some of those specific kinds of issues and concerns that the public had. I'm not addressing all of those, but this particular one seems to be especially frustrating to the public, and it seems to be a roadblock that most bodies have not done. Most political subdivisions have been very good and been open, but we have found across the state in various types of political subdivisions where they have made it difficult for the public to appear. And it may be that one individual who they're frustrated with, but it may also be a very heated topic of discussion, and it may be different people. But we don't do anything with the rules of that body to regulate how long they talk, who can speak, when they have the public access time, when they have the public hearing. This doesn't address any of that.

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Those reasonable rules still remain intact for the public bodies to enforce. [LB962]

SENATOR GAY: Thank you, Senator Preister. And Senator Preister, I think that that's very important, that those rules, though, on behalf of the rest of the people at the meeting, which would include the elected officials but other participants on other agenda items down the road, are treated fairly as well, because sometimes you may come to a meeting and there's 10 items on the agenda, 20 items on the agenda, and somebody continually gets up. I think the time, by not getting rid of that time, not to...but that is at the discretion of the chair or the body that's making up the rules. So if we have a ten-minute rule...we do it here in the Legislature with a five-minute rule. Otherwise, these meetings could go on forever. But I do believe there's a certain medium, and this wouldn't take that away, the way I read the bill, that the chair or the locals could still say, well, we're going to allow five minutes. Senator, one other question. Senator Erdman alluded to it a little bit, is if you want to get on an agenda, though. Let's say there's a hot topic and something that, you know, we addressed. Can counties, cities, school boards, whoever, townships, can you...is there still a law out there, or can they not revisit an issue every time? So let's say I have a real issue that just...that I'm interested in, and I want to put it on that agenda every week, darn it, because they're just not getting my point. A citizen can't do that, can they? Is there limits to...you address an issue, let's say, a controversial issue. Can you talk about that and share any experience that you might have on that? [LB962]

SENATOR McDONALD: One minute. [LB962]

SENATOR PREISTER: Sure, Senator Gay, and if we need more time, I'll press my light. If a citizen wants to get onto an agenda, they have the right to petition that public body. Each body may set it up differently, but essentially they would request something in writing, with the details outlined in that, and the person would need to go to that public body to find out if they have a set form or a set requirement. But it's up to that body. They make the determination if they will grant that request or not grant that request for that issue. So if somebody comes and they've already discussed the issue, they've already had their public hearing, it's within the right of that public body, as I understand it, to refuse. They should give the cause and the reason that they're refusing, but they have that right. So just because somebody petitions doesn't automatically give them any right in statute to be automatically given a place at the microphone during a meeting. The open meetings law states specifically... [LB962]

SENATOR McDONALD: Time. Thank you, Senator Gay and Senator Preister. Senator Hansen. [LB962]

SENATOR HANSEN: Thank you, Madam President. Would Senator Preister yield for a question? [LB962]

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SENATOR McDONALD: Senator Preister, would you yield to Senator Hansen? [LB962]

SENATOR PREISTER: Of course. [LB962]

SENATOR HANSEN: I thank Senator Preister for bringing this legislation. I think it's real important that we hear from the public, I really do. The question I would have for Senator Preister was, many city councils, NRD boards, county commissioners, handle this in a different way, and some have public input at the first of the meeting, and that is on the agenda every month. Some groups try it at the end of the meeting, so they can refer back to what the elected officials were talking about, and some ask that they be put on the agenda. How would you envision using this addition to the law in helping a political subdivision, a city council or an NRD board, for controlling the public? I mean, the public needs their input, for sure. But when you get meetings going till midnight, it kind of defeats the purpose of the city council or an NRD board to get their work done. So how do you envision this in helping the political subdivision? [LB962]

SENATOR PREISTER: Thank you, Senator Hansen for that, and I think I can answer your question and tie it in with the finishing of answering Senator Gay's question, because I think the public bodies do need to have reasonable accommodations where they set regulations and rules, and we need to have orderly meetings. We need to have orderly hearings. The public can come in, and they need to be respectful, just as we need to be respectful of them. So the bodies themselves maintain all control over how that is done. The Open Meetings Act provides for reasonable rules and regulations to govern that, but it's very vague. It doesn't go beyond that. So it allows for that flexibility that you're talking about, so that an NRD can do it one way, a county board can do it another way, a city can do it another way. They can set it up when they have the public comment period. It can be at the beginning, and some do an open mike, and you can just come up and say anything you want. Some have...and I prefer this...the open mike is good, but I prefer when you have an item and you have a specific public hearing, and after it has been addressed or opened on, much as we do in our committee hearings, and then the public comes up and speaks on that particular issue at that particular time, and everybody has the same guidelines. If it's a time limit, if it...whatever the rules are, everybody gets the same rules. And then you go on to the next. But that's totally up to the political subdivision. They maintain all of that control and all of that authority to set all of those rules and regulations that they deem work best in their particular situation. So they maintain the specificity of how it's done and the control over the meeting, and they can even limit and say, we're not going to have public comment at this entire meeting. But at some time, they have to allow it. Maybe not that meeting, but the next meeting. The Open Meetings Act does require that you give the public some opportunity, but again, it's very loose in how they do that. So those public bodies, Senator, do maintain pretty much all the control. [LB962]

SENATOR HANSEN: Okay. I guess this would be a follow up on Senator Erdman's

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question, too, about getting on the agenda, and this has nothing to do with the ability for someone to go in a week ahead of time or two weeks ahead of time and ask for a spot on the agenda, would it? [LB962]

SENATOR McDONALD: One minute. [LB962]

SENATOR PREISTER: No, Senator. This would just prevent the body from making you come in, in advance to sign up. Those other impediments...if some public body wants to make it difficult for the citizen, I'm not changing that. They can still make it very difficult, and my efforts have been to discourage that, but we aren't dealing with that here, sir. [LB962]

SENATOR HANSEN: Thank you, Senator Preister, and thank you, Madam President. [LB962]

SENATOR McDONALD: Thank you, Senator Hansen. (Doctor of the day introduced.) Proceeding with debate on LB962, Senator Gay, followed by Senator Preister. [LB962]

SENATOR GAY: Thank you, Madam President. If Senator Preister would yield to a question. [LB962]

SENATOR McDONALD: Senator Preister, would you yield to Senator Gay? [LB962]

SENATOR PREISTER: I would be happy to. [LB962]

SENATOR GAY: Thank you, Senator. Senator Hansen brought up a fact and I guess I'm a little...I'm with you. I think on any agenda--maybe I'm misunderstanding. If you go in and have ten agenda items on a city or county or whatever, you can still say public "open mike," let's call it, public comment at the beginning or the end. You have to have that on your agenda? Do you have to have that on your agenda, an open comment period? [LB962]

SENATOR PREISTER: If you're going to do it, then that would be listed on the agenda; otherwise, the public wouldn't know that you're going to do it, and that agenda has to be published 24 hours prior to a meeting, minimum of 24 hours prior to the meeting. [LB962]

SENATOR GAY: Right, the publication notices and... [LB962]

SENATOR PREISTER: Right. [LB962]

SENATOR GAY: ...those are very strict, I know. [LB962]

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SENATOR PREISTER: Yes. [LB962]

SENATOR GAY: So on the scenario where there's ten agenda items, an individual that wants to speak, you open up each item independently. Does not the public get a chance to speak on...they don't get a chance to speak on all ten items, if they wanted to? Let's say I had two particular items of interest. Could some city...do they make me wait till the end of the meeting to speak, even though my agenda item was number two? [LB962]

SENATOR PREISTER: Yes. [LB962]

SENATOR GAY: That's...well, I agree with you, Senator. I think you should be allowed to speak on most all issues, and I was confused, because I do agree there should be time limits if you want to speak on an issue, and if that person wants to speak on every issue, I guess, you could limit their time. But that's interesting. I didn't realize that. [LB962]

SENATOR PREISTER: Some bodies, Senator, have had the open mike and limited the amount of time, so very few people could actually speak. So they can say we provided the opportunity, but they made it for five minutes and there may have been 20 people that wanted to speak. Some have done it at the end, after they have already discussed the issues, after they've already taken a vote, after the action is over, and then at the end they give the public a chance to comment. What influence, what impact is that going to have after the vote is already taken and the issue is done? [LB962]

SENATOR GAY: Yeah, I agree with you. Well, Senator, I'm in support of this bill. I'm going to vote for it, and I hope others. I think we're having a good discussion on this. I didn't realize that happened. I do realize that, you know, you'll get some people wanting to talk again and again and again, and that's fine too. And I do think it's important there's time limits, though. Like I say, we do that here, where we try not to be repetitive in the interests of everybody's time, for those at the end of the meeting versus those at the beginning of the meeting. That's only fair, but...so I guess I, Senator, I appreciate your bringing this to the body and your knowledge here that you're sharing with us. But that's all I had at this point. Thank you, Madam President. [LB962]

SENATOR McDONALD: Thank you, Senator Gay. Senator Preister, you are next. [LB962]

SENATOR PREISTER: Thank you, Ms. President. Are there any other lights on? [LB962]

SENATOR McDONALD: No, there are not. [LB962]

SENATOR PREISTER: May I use this as my closing? [LB962]

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SENATOR McDONALD: You certainly can. You may close on LB962. Thank you.
[LB962]

SENATOR PREISTER: Thank you. Thank you, colleagues. I appreciate the opportunity for the education, because the Open Meetings Act and the Open Records Act is extremely important to the public. We may sometimes be challenged by the lateness of the night in our hearings and in the opportunity for the public to speak. We may not always agree with the public, but it is their government. We are here as their representatives. If we're not listening to them, if other public bodies are not listening to them, frequently I think it's because those elected officials are new and they don't always understand the requirements, and some of those public bodies don't always have an attorney available to help to educate them. Through the legislation that we've been doing the last three or four years--I guess maybe even a little longer than that--when Senator Schimek was the Chair of the Government Committee, and then as Senator Aguilar took over, both of them have been very helpful and instrumental in helping to move this issue forward, and I thank them both, as well as the committee members. But during that time, we have tried to educate. The counties have done a very good job. The counties make available every year an edition of the Open Meetings Act and that needs to be displayed wherever there is a public meeting, and then the public can go to that act and see what it entails so they understand their rights. Yes, it's a challenge to accommodate the public. Yes, democracy is sometimes messy. But isn't that what democracy is about? I think we have a responsibility to prevent the impediments that are sometimes put in front of people and allow them open, easy access to petition their government. This bill, LB962, is a very modest request at doing that. It simply says that you can't require a member of the public to come in, in advance of the meeting and get permission to be put on the agenda for an upcoming meeting. If you're going to have an agenda item that has a normal public hearing, they have the right to come in and appear, without having to be put on the agenda or intimidated by whether or not you're going to even allow that to happen. They have the right to come in and appear and testify, within all the established rules and regulations that your particular situation may require, in your and your legal counsel's opinion. It's a pretty straightforward bill. It reads easy. There are no committee amendments. I'm offering no additional amendments. Though I may be tempted to, I am not. I thank everyone for their attention, and I appreciate your green vote. Thank you. [LB962]

SENATOR McDONALD: Thank you, Senator Preister. You have heard the closing on the advancement of LB962 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB962]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Madam President. [LB962]

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SENATOR McDONALD: The bill advances. Items for the record? [LB962]

ASSISTANT CLERK: Madam President, your Committee on Revenue reports LB710 to General File. Amendment to be printed, by Senator Avery to LB912. New resolutions: LR252 by Senator Avery, LR253 by Senator Hansen, and LR254 by Senator Fischer. (Legislative Journal pages 734-736.) [LB710 LB912 LR252 LR253 LR254]

SENATOR McDONALD: Thank you, Mr. Clerk. Mr. Clerk, we will proceed on with General File, LB914, by the Revenue Committee. Senator Synowiecki, you're recognized to open on LB...Mr. Clerk. [LB914]

ASSISTANT CLERK: Madam President, LB914, introduced by the Revenue Committee. (Read title.) The bill was read for the first time on January 14 of this year, referred to the Committee on Revenue. That committee reports the bill to General File, with committee amendments attached. (AM1676, Legislative Journal page 419.) [LB914]

SENATOR McDONALD: Thank you, Mr. Clerk. Senator Janssen, you're recognized to open on LB914. [LB914]

SENATOR JANSSEN: Thank you, Madam President, members of the Legislature. LB914 is a bill brought to us by the Department of Revenue. It would amend 13 sections of the statute to change deadlines for filing returns or amending returns to a uniform 60 days. In the sales tax and motor fuel statutes, this change generally grants the taxpayer more time, from 30 days to 60 days. In the income tax section, however, the time is generally shorter, from 90 days to 60 days. The bill would also amend two sections to grant the Tax Commissioner general authority to waive interest. Currently, interest may only be abated in certain defined circumstances. The bill would also clarify those members of an LLC, that acts as a manager, that are liable for unpaid taxes to the same extent as corporate officers, and it strikes the Tax Commissioner as the person to receive the report from the county treasurer summarizing the deposition of fines and penalties. Finally, the bill would amend six sections, unifying the cash fund dealing with tax incentive programs. In other words, the bill would change the Nebraska Advantage Fund, the Nebraska Advantage Rural Development Fund, and others into a single Nebraska incentive fund. These cash funds are where application fees are deposited in the Department of Revenue appropriations--includes the money in those various cash funds. That is the extent of the bill, Madam Chairman. Thank you. [LB914]

SENATOR McDONALD: As the Clerk stated, there are amendments from the Revenue Committee. [LB914]

SENATOR JANSSEN: Thank you, Madam President. The committee amendments, AM1676, rewrite Section 1 to make it clear that the members in an LLC have personal liability for taxes, only if the members, managers, or employees of the LLC has

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responsibility for paying...or accounting for taxes, and those taxes are not paid due to willful failure to do so. This is the same rule that applies to corporate officers. The committee amendments also add a new section, changing an appeal deadline from 30 days to 60 days. This particular section deals with the imposition of the personal liability on a corporate officer. And that is the extent of the committee amendments, Madam Chairman. [LB914]

SENATOR McDONALD: Thank you, Senator Janssen. Is there anyone that would like to discuss LB914 and the committee amendment? Seeing no lights on, Senator Janssen? Senator Janssen waives closing on the committee amendment. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB914]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of committee amendments, Madam President. [LB914]

SENATOR McDONALD: Mr. Clerk. [LB914]

ASSISTANT CLERK: Senator Janssen, you had offered AM1834, but I understand you wish to withdraw that? [LB914]

SENATOR McDONALD: The amendment is withdrawn. We're open for discussion on the bill, LB914. Anyone wishing to speak on LB914? Seeing no lights on, Senator Janssen? Senator Janssen waives closing. The question is the advancement of LB914. All those in favor vote aye; all opposed vote nay. Record, Mr. Clerk. Senator Flood, with an announcement. Mr. Clerk. [LB914]

ASSISTANT CLERK: Madam President, the vote on advancement was 33 ayes, 0 nays. [LB914]

SENATOR McDONALD: Thank you, Mr. Clerk. Speaker Flood for an announcement.

SPEAKER FLOOD: Thank you, Madam President, members. Good morning. Quick announcement, just to kind of run through a couple of changes here as we begin getting ready for full-day sessions. They begin on Tuesday; we will continue to begin the first day of each week at 10 a.m., unless otherwise announced. The last day of the week, once we begin full sessions, we will work through the lunch hour and adjourn, as a general practice, no later than 3:30 in the afternoon, to get out of here a little bit early on the last day of the week. On the other days of the week, we will come back after lunch at 1:30, and we will work until approximately 5 o'clock. I will be providing the body with a late-night schedule the week of March 10, but just a heads-up to keep your nights open, beginning March 25. The workload for the remainder of the session: The session with a number of days is just over one-half of the way through; however, we have two-thirds of the session's work to do yet. We have 54 priority bills in General File yet to be

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discussed and another 29 still in committee. Included in that mix are a number of bills that will take a lot of time on this floor. Additionally, we have a budget package to address once the Appropriations Committee does their work. So we will be beginning full days on Tuesday. Foreshadowing of next week's agenda: Next Tuesday we're going to start at 10 a.m. with Final Reading in the morning. In the afternoon we will begin with debate of LB1157, the student assessment bill. Additionally, Tuesday's agenda will list the divisions of most of the senator priority bills currently on General File. This will be a very extensive agenda. The agenda will give many of you some notice where your bill fits in the mix. Please do keep in mind, however, that I intend to move the divisions around from day to day as I see fit, to assist the body in making progress on our 2008 workload. Tuesday's agenda, with the new divisions, will be available by mid-afternoon today. I've also been getting questions about Select File. I intend to schedule Select File next week, either Thursday or Friday. And also a heads-up that next Thursday, March 6, at 2:30 p.m., I will be scheduling the Business and Labor Committee's report on the appointment of Sam Jensen to the CIR. If you have any questions regarding the announcement this morning, please see me at your convenience. Thank you, Madam President. []

SENATOR McDONALD: Thank you, Speaker Flood. Mr. Clerk, we will proceed to General File.

ASSISTANT CLERK: Madam President, first bill is LB822, introduced by the Legislative Performance Audit Committee. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Government, Military and Veterans Affairs Committee. That committee placed the bill on General File, with committee amendments attached. (AM1737, Legislative Journal page 681.) [LB822]

SENATOR McDONALD: Senator Schimek, you are recognized to open on LB822 for the Performance Audit Committee priority bill. Senator Schimek. [LB822]

SENATOR SCHIMEK: Thank you, Madam President and members. I'm going to try to be very cooperative with the Speaker today and move this agenda right along. I don't think this bill is going to take any time at all, and that might help with some of the other bills. LB822 is a clean-up bill introduced by the Legislative Performance Audit Committee, and it would make four technical corrections to our statutes and those of the Auditor of Public Accounts. We did consult with Auditor Foley in drafting this bill, and it does have his support. Briefly, the four changes in the bill are: One, LB822 would update references to the government auditing standards that both the Legislative Performance Audit staff and the Auditor of Public Accounts staff must follow. Those standards were revised in 2007, and LB822 would simply strike the existing references to the 2003 version and replace them with references to the 2007 version. Second, LB822 would update references to the GAO. It's now being called, instead of the General Accounting Office, it's the Government Accountability Office. Third, at Auditor

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Foley's request, LB822 would eliminate one obsolete section or subsection of the APA statute on page 9 of your bill, and the committee amendment would clarify a remaining subsection. Finally, LB822 would add the legislative auditor as one of the people authorized to recommend performance audit topics to the committee. This change should have been made in 2006 when we created the legislative auditor position, and it was simply an oversight that it was not. With that, Madam President, I would urge the advancement of LB822, as it's going to be amended, hopefully, with the committee amendment. Thank you. [LB822]

SENATOR McDONALD: Thank you, Senator Schimek. As the Clerk stated, there are amendments from the Government, Military and Veterans Affairs Committee. Senator Aguilar, as Chair of the committee, you are recognized to open on the amendments. Senator Aguilar. [LB822]

SENATOR AGUILAR: Thank you, Madam President and members of the body. In the green copy of the bill, some language regarding the auditor developing a plan to implement on-line filing of financial information by political subdivisions is eliminated. The language is being eliminated because the plan was presented in 2003 and is therefore outdated. The next section of the statute was intended to deal with only political subdivisions, but because the previous language was eliminated, that was no longer clear. The committee amendment clarifies that the auditor is required to develop and maintain an accessible on-line financial information system for political subdivisions only. The committee advanced the bill on an 8-0 vote. I urge your adoption of the committee amendment and the underlying legislation. Thank you, Madam President. [LB822]

SENATOR McDONALD: Thank you, Senator Aguilar. Is there anyone that would like to speak to the committee amendments? Seeing no lights on, Senator Aguilar waives closing. The question is, shall the committee amendment to LB822 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB822]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of committee amendments. [LB822]

SENATOR McDONALD: Getting back to the bill, LB822. Are there any lights on? Anyone like to speak to LB822? Seeing no lights on, Senator Schimek closes. The question is, shall LB822 advance? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB822]

ASSISTANT CLERK: 29 ayes, 0 nays on the motion to advance the bill, Madam President. [LB822]

SENATOR McDONALD: The bill advances. Mr. Clerk, we will proceed to General File.

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[LB822]

ASSISTANT CLERK: Madam President, next bill is LB1147, which was introduced by the Retirement Systems Committee. (Read title.) The bill was read for the first time on January 23 of this year and placed on General File by the Retirement Systems Committee, with committee amendments attached. (AM1999, Legislative Journal page 675.) [LB1147]

SENATOR McDONALD: Thank you, Mr. Clerk. Senator Synowiecki, you are recognized to open on LB1147, as the Nebraska Retirement Systems Committee Chair. [LB1147]

SENATOR SYNOWIECKI: Thank you, Senator McDonald. Good morning, members. Today I am bringing to the floor LB1147. It's a bill to change the cost-of-living adjustment provisions in the state's defined benefit plans. LB1147 was introduced on behalf of the Nebraska Public Employees Retirement Systems. It makes a technical change to the way cost-of-living adjustments are calculated. In the past, the State Auditor of Public Accounts has had concerns about the current COLA calculations. LB1147 is an attempt to resolve those issues with a more understandable statute which accomplishes the same thing. LB1147 was developed by the Nebraska Public Employees Retirement Systems in consultation with the State Auditor's Office. The bill was advanced to General File on a 6-0 vote by the Retirement Systems Committee. Thank you. [LB1147]

SENATOR McDONALD: Thank you, Senator Synowiecki. As the Clerk has stated, there are amendments. Senator Synowiecki, the committee amendments. [LB1147]

SENATOR SYNOWIECKI: Yes, thank you again, Senator McDonald. AM1999 is the committee amendment to LB1147 and essentially contains the provisions of two Retirement Systems Committee bills, LB937 and LB938. The Retirement Systems Committee was asked to introduce both LB937 and LB938 on behalf of the Nebraska Public Employees Retirement Systems. LB937 clarifies that counties and state agencies must ensure that employees are enrolled and make required contributions to the retirement system immediately upon becoming an employee. LB937 will harmonize these sections with other sections of statute that provide for an immediate enrollment and reenrollment of employees in the county and state retirement plan. LB938 would allow a beneficiary of a member of the county or state defined contribution plan to choose investment options. Currently, beneficiaries do not have the statutory authority to choose investment options within these plans. Thank you, Senator McDonald. [LB1147 LB937 LB938]

SENATOR McDONALD: Thank you, Senator Synowiecki. Is there anyone that would like to discuss AM1999? Seeing no lights on, Senator...we do have a couple of lights on. Senator Gay. [LB1147]

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SENATOR GAY: Thank you, Madam President. Would Senator Synowiecki yield to a question? [LB1147]

SENATOR McDONALD: Senator Synowiecki, would you yield to Senator Gay? [LB1147]

SENATOR SYNOWIECKI: Yes. [LB1147]

SENATOR GAY: Senator, on that did you say the beneficiary can change in the plan of what they want to do, in the county plan? Is there a fixed portion and then a variable portion? The beneficiary gets to change, after the spouse passes away or during a divorce, or how would that happen? [LB1147]

SENATOR SYNOWIECKI: Senator Gay, as I understand it, right now statutorily they can't change the investment options. If we adopt this, it would give them statutory authority as a beneficiary to change investment options and that sort of thing within a plan. [LB1147]

SENATOR GAY: Okay, so if the...let's say in this case a husband or wife was in all fixed, let's say, and passed away and the spouse says, you know what? Geesh, I better look at this again. And they get some advice and they want to change a little bit to variable. They could have that option, then, to do that? [LB1147]

SENATOR SYNOWIECKI: Under this, yes. And as you know, all new employees come under the cash...they're all "blanketly" cash balance, but for those that maintain the opportunity to select individual investment options, as a beneficiary, right now they can't do that. [LB1147]

SENATOR GAY: Yeah, and I think this is a good change. And then last time when you opened it up, there was a window there last year, right, that we opened up? [LB1147]

SENATOR SYNOWIECKI: There was a window there last year for state and county plan members to enroll under the cash balance program that was very well received, I might add, and the Retirement Systems Committee did a great job of letting the folks know that they had another opportunity to enroll in that. [LB1147]

SENATOR GAY: Yeah, and I think that's a good...that was a good...I didn't know that, so I was just clarifying. Thank you. [LB1147]

SENATOR SYNOWIECKI: Sure. Thank you. [LB1147]

SENATOR GAY: Thank you, Madam President. [LB1147]

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SENATOR McDONALD: Thank you, Senator Gay. Senator Carlson, followed by Senator Pirsch. [LB1147]

SENATOR CARLSON: Madam President and members of the Legislature, I have a question of Senator Synowiecki, if he would yield. [LB1147]

SENATOR McDONALD: Senator Synowiecki, would you yield to Senator Carlson? [LB1147]

SENATOR SYNOWIECKI: Yes, I would be happy to. [LB1147]

SENATOR CARLSON: Senator Synowiecki, I'm not...I don't really have opposition, but I got a question and it's on page 3, and it has to do with employees becoming eligible and when they start paying. Now the language that's stricken says that prior to this, within 60 days under rules and regulations adopted and promulgated by the board, and that's struck and the new language says, immediately upon becoming an employee they would begin making contributions. And it may be different in different plans, but if not, there's a time element in here where it looks like they would be contributing to something that they may not be a part of, because they're not a part of the plan immediately upon becoming an employee. [LB1147]

SENATOR SYNOWIECKI: Yeah, I'm told by counsel that, yeah, they are part of the plan immediately upon enrollment. It's my understanding, Senator Carlson, that in other sections of law we have this, where they enroll immediately into the retirement system, and what this is doing is reconciling this section of law that you point to, to other sections of the law that indicate that, yeah, they can enroll immediately upon employment. [LB1147]

SENATOR CARLSON: Okay, that answers my question, because if they're immediately eligible, they ought to be immediately making contributions. Thank you. [LB1147]

SENATOR SYNOWIECKI: Thank you. [LB1147]

SENATOR McDONALD: Thank you, Senator Carlson. Anyone else wishing to speak on the amendments to LB1147? Seeing none, Senator Synowiecki waives closing on the committee amendments. The question is, shall the committee amendment to LB1147 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB1147]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of committee amendments. [LB1147]

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SENATOR McDONALD: The amendment is adopted. Further discussion of advancement of LB1147? Senator Cornett. Senator Cornett waives. Senator Synowiecki waives on LB1147. All those in favor of advancing to E&R Initial please vote yes or vote nay. Please record. [LB1147]

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to advance the bill. [LB1147]

SENATOR McDONALD: The bill advances. Mr. Clerk, we will proceed to General File. [LB1147]

ASSISTANT CLERK: Madam President, next bill is LR4CA, which was introduced by Senator Avery. It is a proposed constitutional amendment to provide that misdemeanors related to the election to office are grounds for impeachment of civil officers. The resolution was read for the first time on January 5 of last year, referred to the Committee on Judiciary. That committee reports the bill to General File with no committee amendments. [LR4CA]

SENATOR McDONALD: Thank you, Mr. Clerk. Senator Avery, you are asked to open on LR4CA. Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Madam President. I wanted to start by thanking the Judiciary Committee for naming this one of its priority bills. I introduced this last year and was quite pleased and surprised when I got the news that this would be a priority bill for the committee. LR4CA seeks to clarify constitutional language dealing with impeachment. The specific section of the constitution that is addressed is Article IV, Section 5, which reads now: "All civil officers of this state shall be liable to impeachment for any misdemeanor in office." Emphasize "in office." Under the proposed changes, Article IV, Section 5 would read as follows: "A civil officer of this state shall be liable to impeachment for any misdemeanor in office or for any misdemeanor related to the election by which such officer was elected to the office." The resolution is based upon a pretty simple argument, and that is that offenses committed while in pursuit of public office should be treated the same as impeachment offenses committed while in office. And LR4CA would put on the ballot in November a constitutional amendment that would achieve that purpose. A candidate for public office should not be allowed to benefit from the commission of an act that, if committed while in office, could have warranted impeachment. I believe that this resolution is sound public policy. It is intended to buttress the integrity of the election process. I think to have a situation where an officeholder cannot be removed from office for committing an unlawful act during the campaign is disrespectful to the citizens of the state and is an affront to our political institutions. Now I admit that this situation may not come up very often. But it did come up recently in the case involving Regent Hergert. Had he not signed his A and D report after taking the oath of office, he would have gotten off with merely a fine. This development allowed the Legislature and the prosecuting team to make the case that

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he filed a false statement which occurred after taking office and thus it was impeachable. If this is approved by the voters, the amendment would serve as an important deterrent to campaign misdeeds by raising the ante to a higher level of possible consequences. We're not asking too much of those who seek public office. We should all be held accountable for our actions. So I think we need to send the message that campaigns should not be win-at-all-cost endeavors where the end justifies the means. The message must be if you choose to commit an offense that could be impeachable if committed while in office, then you will be held accountable for that offense while you are running for office. I would like to point out that last year we passed LB464, presented by Senator Chambers. It was signed into law April 4 of last year. And that is a piece of legislation that is complementary to this amendment that I am proposing. And what LB464 did was to remove criminal enforcement of the Public Accountability and Disclosure Act from the Accountability and Disclosure Commission and placed enforcement with the Attorney General and granted concurrent jurisdiction with the county attorney of the county in which a violation of the act occurred. I think that in conjunction with LB464 this constitutional amendment would significantly tighten our laws and improve the administration of our election laws. I will stop there and I would ask those who may wish to speak from the Judiciary Committee to do so. Many of you can speak to the experience of the Hergert case in 2006 because you were here and you were part of that process. That might be helpful as well. With that, I will stop and listen to the debate and answer any questions that I might be able to answer. Thank you, Mr. President. [LR4CA LB464]

SENATOR STUTHMAN PRESIDING [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Avery. You have heard the opening on LR4CA. Those wishing to speak are Senator Ashford and Senator Chambers. Senator Ashford, you are recognized. [LR4CA]

SENATOR ASHFORD: Thank you, Mr. President. And I don't wish to speak at any great length on this issue other than to compliment Senator Avery for bringing this bill. The committee met last week and unanimously voted to move this bill to the floor, had already voted to move this bill to the floor, and everyone agreed that this was a very important issue for the reasons that Senator Avery has suggested. I was not there, and many of us were not here last year during the debate, the year before, that ensued on the Hergert matter. Those senators who were there and who are still there can give guidance to us on this issue. We felt it was important that this matter be resolved and debated while many of the senators who were there are still present in the body. And again, feeling this to be a matter of significant gravity for our state, the committee felt strenuously that this matter should be taken up by the Legislature this year. And with that, Mr. President, I would move that we advance LR4CA. Thank you. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Avery. Senator Chambers, you are

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recognized. [LR4CA]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I was here. I was one of the driving forces behind procuring the legislative vote to impeach Mr. Hergert. And I served as an observer during the trial at the Supreme Court. They call those people who serve as members of the Legislature something like...I forget what the exact term is. But we were there, I and Senator Beutler were there. My argument had been that once a person completes all of the requirements necessary to become a candidate, anything that happened from that point onward could constitute an impeachable offense even if it occurred prior to the person being elected and sworn in on the theory that a continuum was established. I had argued that there were existing statutes which, as soon as a person became a candidate for office, exposed that individual to disclosure of information not disclosable on people not candidates, such as certain arrest records and things of that nature. So my argument was since the existing statutes placed a person who was a full-fledged candidate on a different footing from all other students, that would carry over through being elected and anything done after the swearing in and so forth. That issue did not have to be resolved by the court because, as Senator Avery pointed out, Mr. Hergert committed some violations after a certain point which made it occur after he had become an elected official. So since that violation had occurred in his capacity as an elected official subject to impeachment, the court was able to restrict and limit its consideration to those actions placed after he was in office. And it did convict him, and the result of being convicted in an impeachment trial is that you are removed from office and you can never seek public office again. An impeachment trial is not a criminal proceeding. There are no sanctions imposed, no fine, no jail time. It is in the nature of a civil action. So the maximum that can be done is removal from office and disqualification from seeking office again. Mr. Hergert committed some very egregious acts during his campaign. He fibbed. I don't want to shock my colleagues by using that three-letter word that begins with L and ends with E and has the first person pronoun in the middle. But what I was asked to do was to read the words of Mr. Hergert contained in a sworn deposition. I had never read this stuff before. So I'm sitting in front of the courtroom reading this. The lawyer for the state would read the questions put to Mr. Hergert. I would read Mr. Hergert's response. Some of them put me in the condition of that person who, upon first seeing Santa Claus, said I laughed when I saw him in spite of myself. I wasn't prepared for some of the things that I read. [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR CHAMBERS: It would be like they'd ask Senator Carlson, who...did this person work for you for so many years, and Senator Carlson would say yes. What was their first name? Well, I'm not sure. I mean, things like that and actions that he obviously had committed, he waffled in such a way that I had to recover my composure. Then I got into the spirit of the kind of things Mr. Hergert's words indicated would be his

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attitude. And I was so effective...I will finish this when I'm recognized to speak again.
Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Chambers. Senator Chambers, you may continue. [LR4CA]

SENATOR CHAMBERS: It was a very lengthy presentation that I had to give. So in order to maintain the interest of those in the courtroom, I had begun to speak not in a monotone. And I suppose I was so effective in presenting this that Mr. Hergert's lawyer objected. He said, Your Honor, would you instruct the witness not to try to read in such a way as to influence the court, or something like that. Former Chief Justice Hendry--whom I read in the paper today about was just named to be city attorney for Lincoln--said, well, we don't have a jury here and I'm sure that the court can hear this testimony, this presentation without being influenced by the witness' inflections; however, I will caution the witness. And people were smiling, even the judges. And I said, Your Honor, I will abide by that and I will read in a monotonous method. He said, I would like it to be made known that that was the witness' word. I said, yes, Your Honor. And from there on I just read his words. And his words carried conviction of Mr. Hergert. He was removed. All of that could have been avoided had Mr. Hergert resigned as the evidence piled up, even during our proceedings on the floor of the Legislature. He could have been charged with felonies but for the fact that the commission itself had entered an agreement that in effect exempted him from being charged with the full measure of criminal conduct that he had actually committed. That was why I offered the bill last session to take prosecutorial authority away from that commission. It is not a prosecutorial body. It is not a part of the law enforcement end when it comes to criminal conduct. They never should have been granted the power to bring criminal charges. We removed that. What we're doing with what Senator Avery is presenting, and the public would have to vote for it to add it to the constitution, is that all people who run for a constitutional office will be put on notice that if you violate any of these laws during your campaign and should you be elected, that violation or those violations can provide the basis of an impeachment vote in the Legislature and a conviction by the Supreme Court. An impeachment vote is not a conviction, it is not a determination of guilt or innocence. In the public mind that is what it is, but in this regard the public is misinformed as it is on so many things. The vote of impeachment is nothing more than a charge being brought which will then be tried by the court. When you have two houses in the Legislature, the house will review the charges and accusations and if there is sufficient basis to believe that they are true, the house will vote to impeach. That means these charges are formally brought by the house and then they are referred to the senate, which has a trial and will either convict or acquit. Since this is a one-house Legislature... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

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SENATOR CHAMBERS: ...the one house cannot both charge and try. So it is taken before the Nebraska Supreme Court. That court must find evidence of sufficient weight to convict. And once that happens, it's Bye Bye Birdie. But he will not have to say, even though he is a bird, if I had the wings of an angel right over these prison walls I'd fly. No chance of prison or lockup in any facility. Thank you, Mr. President. And if there are any questions you'd like to put to me, I'm prepared to answer them. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Chambers. Senator Carlson, you are recognized. [LR4CA]

SENATOR CARLSON: Mr. President and members of the Legislature, in a minute I'm going to address a question to Senator Avery. But first, I'd like to address one to Senator Chambers. [LR4CA]

SENATOR STUTHMAN: Senator Chambers, would you respond to Senator Carlson? [LR4CA]

SENATOR CHAMBERS: With great trepidation, (quivering voice) yes. [LR4CA]

SENATOR CARLSON: Senator Chambers, did you read this entire bill? [LR4CA]

SENATOR CHAMBERS: I read the one sentence that comprises the bill. [LR4CA]

SENATOR CARLSON: Okay. Well, I've read it, too. And you do have a little history of making us think you've read the entire bill and you really hadn't, so I thought I'd better check this out because your testimony was very eloquent, and I'm going to refer to it in my question to Senator Avery. But I wanted to ask you that first. [LR4CA]

SENATOR CHAMBERS: Yes. Well, here, to be complete, I did read the entire bill, Senator, but I meant with a special emphasis on the new language that was being added. [LR4CA]

SENATOR CARLSON: Okay. Thank you, Senator Chambers. If Senator Avery would yield? [LR4CA]

SENATOR STUTHMAN: Senator Avery, would you yield to questions from Senator Carlson? [LR4CA]

SENATOR AVERY: I will, Mr. President. [LR4CA]

SENATOR CARLSON: Senator Chambers referred to the process of a campaign and even talked about filing for office. And I agree with your bill and will certainly support it. But there's a lot of things that go into and are really part of the beginning of a campaign

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that are very difficult to determine what is the beginning. And it's really not the filing, the time of filing, because there's probably been a lot of preparation, a lot of work done prior to that date. And I don't know that there's a way to address that, but I'd be interested in your thoughts on when does a campaign begin. [LR4CA]

SENATOR AVERY: That's a very good question, Senator Carlson, and I actually am glad you ask it, because I thought about it this morning and I got on the phone and talked to Frank Daley in the A and D office. We actually have two parts of our statutes that define when one is a candidate. Under the A and D section of law, 49-1409, the term is defined in three ways: when one files for office, you're a candidate; when one is nominated for office, you're a candidate; and more generally, when one starts raising money. Now that is in statute 49-1409. The second part of our statutes that define candidates is under election code in Chapter 32-104. And it reads "a registered voter for whom votes may be cast at any election and who, either tacitly or expressly, consents to be considered." That is a candidate. These are somewhat different definitions but sufficiently broad, I think, to define almost any kind of activity involving campaigning for office to qualify you as a candidate. [LR4CA]

SENATOR CARLSON: Thank you, Senator Avery. Appreciate that answer. And if Senator Avery wants additional time, I would yield it to him. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Carlson. You have 1:35, Senator Avery. [LR4CA]

SENATOR AVERY: Thank you, Senator Carlson and Mr. President. I would like to just briefly refer to the court's role in the Hergert case. It's important to point out that the court seemed to go to great pains to avoid, in the Hergert case, actually deciding on whether election activities would be considered relating to the duties of office. In other words... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR AVERY: ...they went out of their way to make sure that they didn't have to address that. If the constitution is amended, it would clarify which offenses are impeachable. And this change that we're proposing takes the decision out of the court's hands to determine whether election activities before taking office are impeachable and allows for the will of the people to decide whether such activities should be impeachable. And they would do that, of course, in an election on this amendment. Such an amendment makes our officials accountable for their actions prior to taking office. The Supreme Court was not able or did not rule on that particular part in the Hergert case, and I thought you might want to know that. Thank you. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Avery. Senator Pirsch, you are

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recognized. [LR4CA]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Avery would yield to a few questions. [LR4CA]

SENATOR STUTHMAN: Senator Avery, will you yield to a few questions from Senator Pirsch? [LR4CA]

SENATOR AVERY: Yes, I'm a little bit nervous though about this because, you know, questions put to one in the form of a prosecutor can be difficult to deal with. [LR4CA]

SENATOR PIRSCH: (Laugh) Well, you've nothing to worry about. I did vote for this bill out of committee. Just a clarification so that we can be clear on the legislative intent. And actually, some background questions to start that really just pertain to the sections surrounding this amendment. With respect to the statute as it exists currently, it currently indicates all civil officers of the state shall be liable to impeachment for any misdemeanor in office. Is that...that's currently the way the statute reads, correct? [LR4CA]

SENATOR AVERY: Yes. And I put emphasis on "in office" because that's really the operative words, "while in office." [LR4CA]

SENATOR PIRSCH: Right. And would that purport then to allow--although maybe probably not possible, at least theoretically possible--allow for any misdemeanor to cause or trigger the ability to be impeached? Is that...as the law currently exists. This really doesn't bear anything to your...it's just a clarification, I guess. Do you know? [LR4CA]

SENATOR AVERY: I think that any court would be reasonable in its interpretation of that clause of the constitution as it currently exists. They would not include parking tickets, for example, which I think are misdemeanors. [LR4CA]

SENATOR PIRSCH: Well, I think they may be infractions, but you're right. I think, you know, improper plates or something of that sort would be a very not-serious misdemeanor. So the courts, have they inferred a certain level from that language, do you know, a certain level that would be a little bit different than just the plain reading of the meaning "misdemeanor," such that only certain misdemeanors may constitute currently the basis for impeachment? [LR4CA]

SENATOR AVERY: In the court case involving Douglas, State v. Douglas, that was, I believe it was 1984, they set forth three categories of conduct that may constitute an impeachable offense by a state officer. Would you like me to read them? [LR4CA]

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SENATOR PIRSCH: No. I think you've answered my question, that the courts will infer certain... [LR4CA]

SENATOR AVERY: Yes. [LR4CA]

SENATOR PIRSCH: ...other standards in interpreting that statute. Great. And with respect to the terms that you've...that are in the amendment, specifically the four words "related to the election," is it your intent to capture broad...you know, there's, I guess, various ways that you can interpret that. Is it...how do you envision those four words, the relation to the election, how do you...when you drafted that, what was your intent? Is that to be broad or to be narrow in scope? [LR4CA]

SENATOR AVERY: I wanted it to be broad enough so that egregious violations of election laws, for example, could be prosecutable, that the courts... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR AVERY: ...would have the authority to look at this and say these activities constitute misdemeanors and they are related to the election and is related to the act of seeking to be elected. [LR4CA]

SENATOR PIRSCH: So you anticipate they would probably be election law violations, the misdemeanors? [LR4CA]

SENATOR AVERY: Yes. [LR4CA]

SENATOR PIRSCH: Okay. Well, I think that answers a lot of...I guess speaks to the legislative intent, and I do...I'd yield any...I don't think we have much time here, but if you had anything further you'd like to follow up with. [LR4CA]

SENATOR AVERY: I thank you for letting me get that on the record, Senator Pirsch. I think it's important for us to establish the true intent of what we're doing. Thank you. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Pirsch and Senator Avery. (Visitors introduced.) We will continue with the discussion. Senator Chambers, and this is your third time. [LR4CA]

SENATOR CHAMBERS: Curses; foiled again by the rules. But nevertheless, Mr. President, members of the Legislature, I would like to ask Senator Avery a question or two so we can further develop the legislative intent. [LR4CA]

SENATOR STUTHMAN: Senator Avery, would you respond to a question from Senator

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Chambers? [LR4CA]

SENATOR AVERY: Yes, sir. [LR4CA]

SENATOR CHAMBERS: Now, Senator Avery, I and any other senator is free to give my view and any other senator can give his or her view. But since you're the introducer, although I'm supporting what you're doing, I want to ask you a question or two as to your intent. Senator Avery, it is not the intent of this provision to restrict or change in any way the existing standards by which an impeachable offense is determined by the Legislature and ultimately by the court. [LR4CA]

SENATOR AVERY: Absolutely not. [LR4CA]

SENATOR CHAMBERS: And it does nothing with reference to the standard of proof that must be adduced in order to procure a conviction. [LR4CA]

SENATOR AVERY: No, it does not. [LR4CA]

SENATOR CHAMBERS: The words...well, I'll read them: "related to the election." Those are broad. Those words constitute a broad statement of principle which the court will construe, interpret, and apply as it does all general language found in the constitution. Would you agree? [LR4CA]

SENATOR AVERY: I would. [LR4CA]

SENATOR CHAMBERS: And if the Legislature is presented with allegations against an official, the Legislature itself will carry on a discussion, and those who support impeachment will try to develop a record establishing that what is alleged would violate these words that exist in the constitution; namely, in relation or connection to an election. [LR4CA]

SENATOR AVERY: Correct. [LR4CA]

SENATOR CHAMBERS: And if an impeachment resolution is voted and sent to the court, the one accused will be entitled to counsel, correct? [LR4CA]

SENATOR AVERY: Absolutely. [LR4CA]

SENATOR CHAMBERS: The counsel, if he or she or they would do their job, which under the ethical standards of a lawyer require zealous defense of a client, those persons would begin perhaps by saying that the constitutional standard is not met; namely, that this conduct alleged is not related to the election. That issue would be raised by competent counsel, don't you think? [LR4CA]

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SENATOR AVERY: I would expect that. [LR4CA]

SENATOR CHAMBERS: And if that hurdle were not surmounted and it was found that the conduct was committed related to the election, the argument could be made that it nevertheless does not rise to the level of an impeachable offense under the rulings of the court in the past, even though this is bringing a new area into which those interpretations by the court can be made, if you can follow what I'm asking. [LR4CA]

SENATOR AVERY: I think I do, and I would agree with that. [LR4CA]

SENATOR CHAMBERS: And you would agree, because you have before you the statement by the court as to what constitutes a misdemeanor in office. That term does not relate to the meaning of "misdemeanor" in a criminal context where it's a criminal violation of an explicit provision of the statute. It goes beyond that, correct? [LR4CA]

SENATOR AVERY: It does. [LR4CA]

SENATOR CHAMBERS: And it relates to the duties, responsibilities of the office, an egregious refusal or failure to carry out one's duties, and things of that kind. Do you agree? [LR4CA]

SENATOR AVERY: I do. And it can also involve omissions... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR CHAMBERS: Yes, the failure to do what they should. [LR4CA]

SENATOR AVERY: Right. [LR4CA]

SENATOR CHAMBERS: Thank you, Senator Avery. The intent that I have in going through this is to make it clear that we on the floor as we vote for this understand that an impeachable offense, a misdemeanor in office, extends beyond the ordinary technical definition or meaning of misdemeanor in a criminal context. The court has defined several times the meaning of that term. And we understand that, and if anybody doesn't I hope they would ask the questions so it could be clear that we're aware of what it is we're voting for. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Avery. Senator Louden, you are recognized. [LR4CA]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I would like to ask Senator Avery questions, if I may, if he would yield, please. [LR4CA]

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SENATOR STUTHMAN: Senator Avery, would you yield to a question from Senator Louden? [LR4CA]

SENATOR AVERY: I will. [LR4CA]

SENATOR LOUDEN: What I was...as I look this over, I'm wondering when we start talking about any misdemeanor related to the election, now where does failure to comply with some of the accountability rules fit in on this? Is that part of the...would be impeachable offenses? [LR4CA]

SENATOR AVERY: Yes, but that would have to be determined by a court. [LR4CA]

SENATOR LOUDEN: Now, for instance, if someone takes too much PAC money and they have to give part of it back and they're fined a few hundred dollars and things like that, would you consider that then to be an impeachable offense? [LR4CA]

SENATOR AVERY: That kind of behavior would be covered by this provision, but it may not rise to the level of impeachable offense. [LR4CA]

SENATOR LOUDEN: Now as I look this over, all this does is set it up that a person commits some of those things, they're just liable for an impeachable impeachment. It doesn't necessarily mean that they will be impeached over it or that anyone will bring the case forward. Is that correct? [LR4CA]

SENATOR AVERY: That is correct. [LR4CA]

SENATOR LOUDEN: I mean, and this has happened before. We've had people that didn't comply with the accountability and they got out of here in great shape. I guess we got out of here scot-free, as we said once upon a time. And some of this, I'm wondering if by putting this wording in here, will this bring more frivolous charges forwards by having this wording in here than what would perhaps happen now? [LR4CA]

SENATOR AVERY: I think you would have to trust the court systems not to let frivolous cases go forward. And I don't...in fact, I think this would be rarely used. But it closes the loophole that needs to be closed. [LR4CA]

SENATOR LOUDEN: Yeah, if there was a loophole there, I guess. What I'm wondering is when you put it in, more definitions in there, gives you area for more frivolous charges. And then by doing that, then people have to defend themselves in court. I mean, you can charge somebody with something and they still have to defend themselves. And this is what my concern is. We have people that probably won't be running for office because of something comes along and they'll figure that they're not

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going to fool with having to defend themselves in court. And this is my concern about adding this language to what we already have. [LR4CA]

SENATOR AVERY: Well, the court, if I may respond, the court has established way back in the Douglas case that violations that rise to the level of impeachment have to have gross or flagrant and willful or corrupting intent must be inferred. And I don't think the courts would be very tolerant of frivolous charges. [LR4CA]

SENATOR LOUDEN: But nonetheless, someone could be charged in that...I mean, if it happened... [LR4CA]

SENATOR AVERY: You could raise... [LR4CA]

SENATOR LOUDEN: ...to be enough politics mixed up in it, they could be charged with... [LR4CA]

SENATOR AVERY: You could raise questions, but my guess is that if it's a frivolous question raised that the legal system would not look favorably on that and it wouldn't get very far. [LR4CA]

SENATOR LOUDEN: Okay. Thank you, Senator Avery. I guess my concern is, is that evidently the system we have has worked pretty good so far up to a point. And whether there's loopholes in there, and I don't know if this is going to close any loopholes or not, or if it just makes some place... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR LOUDEN: ...where people may be more liable for an impeachable offense if they probably weren't before when honest mistakes have been made. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Louden and Senator Avery. Senator Erdman, you are recognized. [LR4CA]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. That was an interesting time in our state's history. And the fact that it happened, I think, provides some guidance. Those of us that were here, and I was a part of different subcommittees determining who the Executive Board would hear from in regards to the Hergert resolutions. There was one resolution done, and if certain actions weren't taken then a follow-up was then pursued by the Legislature. By adding this language to the constitution, it doesn't send individuals to court--it sends them to the Legislature. We are the grand jury, if you will. We will weigh and decide as a body, we collectively, whether or not the offenses warrant further action. And most likely what will happen is that if it is

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necessary, that a strong a case would be made that impeachment would actually be...excuse me, that removal from office would actually occur. The arguments that were made in the Hergert case specifically were not simply whether or not the issues rose to a level of impeachment. It was also...and there was some question. Generally the court found that because the filing...one of the provisions that they specifically articulated was because the filing deadline or the actual filing of the reports came while the individual was in office, and the language says "in office," that under a plain reading of the law that one could make that case. So there's a lot of things that go into this, but the reality was that just because we add the language doesn't mean that folks are going to be in court somewhere. They're going to be back before us. It does open it up to the flexibility of the Legislature to pursue impeachment proceedings on additional individuals under the same theory or guidelines that was pursued for Mr. Hergert. They would have been actually more valid under the existing reading of the law for Mr. Miller because he was a reelection candidate when he violated the law. But that all comes back to, I think, a question of clarification. I think Senator Chambers has done a good job of articulating the fact that the people of the state of Nebraska have lowered the threshold required to secure a decision of the court to remove an individual from office. It's no longer a criminal standard, it's a civil standard. That's not addressed here. Senator Chambers has pointed that out. However, what hasn't been pointed out and needs to be a continuing, at least, consideration is that there are some actions that some members are subject to, or some laws that some members are subject to in their election that others are not. The Campaign Finance Limitation Act is one of them. If a candidate for office never reaches \$5,000 in aggregate spending or aggregate receipts, they are not subject to the act. They are still eligible to be elected. And the idea that the accountability and disclosure requirements under CFLA--not the Political Accountability and Disclosure Act, but the CFLA requirements which are required to be voluntary, which are not mandated for all candidates, and which are not the requirement of all to follow potentially could come under this, as was the case with Mr. Hergert. So we do need to be careful. If the people of the state of Nebraska believe that the individuals that get elected to office do so fraudulently, there should be a remedy. And, in fact, there was. Twenty-five members of this Legislature felt that that was the case with Mr. Hergert. The Supreme Court concurred with that ruling and found that Mr. Hergert should be removed from office and is therefore barred from pursuing office ever again as a Nebraskan unless that would be reversed, which was the case for our first impeached officer... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR ERDMAN: ...in the state of Nebraska, which was our governor at the time. So there's a lot that goes into this. The assumption can't be made that any misdemeanor relating to office...relating to the election is the same for all candidates. It is not, because if I don't raise \$5,000 or spend \$5,000, I'm not subject to CFLA. And if Mr. Hergert wouldn't have either, we couldn't have impeached him under that law or

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under this change. Had he violated the election law--in other words, had he paid people to vote for him, had he gone through the process of fraudulently having people register to vote and obtain absentee ballots fraudulently--those things would still be, under this language, eligible for an impeachable offense or liable for an impeachable offense. So there's more to this discussion than what's here. I think this is clarifying. And, in fact, if Senator Beutler had pursued this as he said he would when he was a member of the Legislature, it would have been beneficial at the time. But we couldn't because the Legislature at the same time was trying... [LR4CA]

SENATOR STUTHMAN: Time. [LR4CA]

SENATOR ERDMAN: ...to make the case that the law allowed us to do what ultimately the Legislature and the court did. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Erdman. Senator Rogert, you are recognized. [LR4CA]

SENATOR ROBERT: Thank you, Mr. President, members of the body. In order to continue this discussion for legislative intent, I yield my time to Senator Chambers. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Rogert. Senator Chambers, you have 4:42. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Rogert. Members of the Legislature, the constitution is the starting point for impeachment. Remember, if a person violates an ordinary criminal statute, that person can be prosecuted criminally. At the same time that there's criminal prosecution, there can be an impeachment proceeding. The two are not mutually exclusive. One does not prevent the other. A person who is impeached and convicted by the court can only be removed from office and prohibited from seeking office again. That proceeding cannot result in any criminal sanction. If a person were to violate a bribery statute, that person, even upon being impeached and convicted by the court, could be charged criminally, prosecuted criminally, convicted criminally, sentenced criminally, and there is no double jeopardy because you do not have two criminal actions growing out of the same violation for which a person had already been convicted. So the two are on parallel tracks but they never converge. It would be like a train track. If you looked at it and it went a great distance into the future, because of the way the concept or principle of perspective operates, those tracks will appear to converge and join if you go far enough. But in reality, if they're parallel, the same distance that is between them when you start will be the distance between them if they go on all the way around the Earth, leave the Earth and go to Mars, Pluto, Venus, and anywhere else. So one of these proceedings does not in any way affect the other. However, if a person should be charged criminally

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and convicted criminally, that can become a basis for impeachment. But you also have to consider that some types of felony convictions will automatically disqualify a person for holding office. But the issue is that the constitution will give impeachment as the only means by which certain constitutional officers can be removed from office. As far as what Senator Loudon was bringing up, it's a valid matter for discussion but it does not raise a critical issue. Anybody can allege anything, but you would have to persuade the Legislature that a majority of the members should vote to send that matter to the Supreme Court. If a person gets a DUI on the way to a campaign rally, that to my mind would not rise to the level where the Legislature by a majority vote would impeach and say we want to lodge this charge and send it to the Supreme Court. Impeachment is not a process that has been used willy-nilly, frequently, and in some cases--at least one that Senator Erdman pointed out--where it may be very... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR CHAMBERS: ...strongly indicated will not be resorted to at all. I would hope that any question that anybody has on this that we're doing would ask it. In this case, the only stupid question is the one that is not asked. We should make this record as complete as anybody thinks is necessary. And if you feel, as Senator Loudon did, that maybe frivolous allegations would be made, ask it so we can point out how this language would impact on the things such as that. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Rogert. Senator White, you are recognized. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. I have spent a lifetime literally in the courts, since I was a small boy. I do not share the faith that Senator Avery has in that system. They're honest, they try hard, but they can be manipulated. They can also be persuaded by political passion. I have serious concerns that this is a recipe to further divide this body under partisanship attack. Almost any violation, as Senator Loudon realized, of accountability and disclosure can be a misdemeanor. It will not come from inside of this body, but from political people on the outside; will regularly use this system to divide each other, to punish senators that have voted in a manner they don't agree with. The cost just inside of accountability and disclosure of responding to these effectively will be staggering for individual senators. I understand what Senator Chambers said, and I approve what happened with a candidate who systematically, intelligently, knowingly lied under oath--perjury--about campaign statements, and campaigned illegally. I understand that impeachment. But the law is set there. What this, however--as broad as it is, doing what it does--will do, and it will take maybe a year or two or five, but when it grows to full height and flowers, will be one of the most divisive uses of our power you can imagine. We will find all of us, ourselves, defendants not because we did wrong but because we voted wrong according to some. I think it is overbroad and it is very dangerous. Thank you, Mr. President. [LR4CA]

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SENATOR STUTHMAN: Thank you, Senator White. Mr. Clerk, for an announcement. [LR4CA]

ASSISTANT CLERK: Thank you, Mr. President. The Government Committee will meet in Executive Session at 11:00 this morning in Room 2022. [LR4CA]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Avery, you are recognized. [LR4CA]

SENATOR AVERY: I just want to refer to a couple of previous cases that actually set the bar pretty high for impeachment and define the three impeachable offenses. I think this is...does speak to the concerns that Senator White just raised. In 1893 in State v. Hastings and again in 1984 in State v. Douglas, these two cases laid out three categories of conduct that may constitute an impeachable offense by state officers. Now they were operating under the current language; that is acts committed in office. What we would do with this amendment, we would include these acts committed during election. They are...these three impeachable offenses are: an act that violates a statute, constitutional provision, or oath and is related to the officer's duties; a simple neglect of duty committed for a corrupt purpose; a neglect or disregard of duty that is so gross or flagrant, the officer's willful and corrupt intent may be inferred. That's a pretty high standard. So I don't agree with the argument that we're opening up some sort of avenue here for frivolous charges and the introduction of partisanship in this body. I do not think this body would take these frivolous charges seriously. We would not even be discussing them on the floor. What we would do is what Senator Chambers has indicated--take serious charges and deliberate carefully about them, and we'd be using guidelines established by these two cases I just mentioned. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Avery. Senator Schimek, you are recognized. [LR4CA]

SENATOR SCHIMEK: Thank you, Mr. President. I would like to give my time to Senator Chambers, if I might. [LR4CA]

SENATOR AVERY: Senator Chambers, you have 4:51. [LR4CA]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Schimek. With regard to the concerns that Senator White and Senator Loudon have expressed, again I say, those issues should be discussed but they do not raise issues of consequence. First of all, if something was clearly partisan--and that is a concern that Senator White seems to have--remember this: it's not done in a vacuum. There are editorial writers, there are people from the opposite party, whichever one feels that its member is being

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attacked for partisan reason, and the Legislature, with all due respect, is not known for being a body with a strong backbone and a belly for a contentious public dispute, an argument where editors are going to condemn the Legislature. I won't be back, but if I were coming back, I wouldn't fear this language. And if it was going to be invoked, I might be the one it would be invoked against because the public voted to change the constitution to get rid of me. I couldn't do anything about that. The Legislature had nothing to do with it. So if you look from your experience--whether it has been much, as with me, or not as much, as with some of you who are new--there are not many of you, if any of you, who would say that on a trifling allegation or accusation 25 members of this Legislature are going to vote to send something to the Supreme Court. We do not convict. We determine if the issue should go to the court for its consideration. There are people who remain among us today who, despite the strength of the allegations and the evidence against Mr. Hergert, did not want the Legislature to impeach. We got 24 votes. The last vote was Senator...who was the last person to vote at that time? Anyway, we had 24 votes and he was the last one to vote and he voted aye, which gave us the 25th vote. That proceeding went through several committee sessions, subcommittee sessions, much wrangling, and it was not done easily. Impeachment is not something that any legislature has resorted to on a frequent basis. It puts the Legislature right in the cross hairs of the public. It lets the public see which matters are deemed serious enough by the Legislature to vote to send it on, where there are two houses, to the senate; or in the case of this Legislature, with which we're concerned, to the Nebraska Supreme Court. The lawyers are aware that once something is filed in court, a person can move for a summary judgment, a dismissal, or any of the motions that are allowed when you think there's not a basis for carrying this on, that no cause of action has been stated, that if all things stated are true, nevertheless there is no cause that the court can entertain so it ought to be dismissed. All of that is available. If a person should be... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR CHAMBERS: ...charged with an impeachable offense and it goes to the Supreme Court and the Supreme Court acquits, that person can seek costs which must be paid by the state. One of the arguments made by those who opposed our voting to impeach Mr. Hergert was the amount that the state would have to pay in his legal costs if the court acquitted. All of those things are going to be brought forth. It couldn't be where Senator Harms or Senator Wightman would say, we don't like what Senator Chambers has done so the Legislature ought to impeach him, I move that Senator Chambers be impeached; and the Chair says, all those in favor vote aye, and they vote aye. That wouldn't work even with me. I offered an amendment, Senator Harms, that would allow my colleagues to subject me to capital punishment and they voted no. The one opportunity they had to free the state... [LR4CA]

SENATOR STUTHMAN: Time. [LR4CA]

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SENATOR CHAMBERS: ...they voted against it. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Chambers and Senator Schimek. Senator White, you are recognized. [LR4CA]

SENATOR WHITE: Thank you, Mr. President. I want to correct something, and I thank Senator Schimek for it. She points out that we're removable, the Legislature is removable by our members; we're not constitutional officers. Although the language in this one arguably would make us impeachable because I think, as Senator Flood says, it's any civil officer. Is that correct, Senator? Any civil officer. So that does arguably apply to us suddenly. I'd also tell you that what this does, as Senator Erdman is pointing out, has pointed out, is if you, for example, miss a filing deadline on your campaign statement and you're fined \$50, that is technically a misdemeanor. It is related to a campaign and you have now, whether we impeach you or not, committed an impeachable offense. Something as innocent and simple as getting it in the mail late now becomes, quote, an impeachable offense. That is not good for our political process. Clearly, Senator Avery has real concerns, they're legitimate concerns. Senator Chambers has legitimate concerns about those who commit egregious, long-term, intentional statements, misstatements, abusing our laws in order to get elected, lying under oath on different things. I can see that. But this is so far broader than that, that literally at the end of a political career no one, no one will be able to go through a career without, quote, committing an impeachable offense. And that is not what we should be looking at. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator White. Speaker Flood, you are recognized. [LR4CA]

SPEAKER FLOOD: Thank you, Mr. President and members. Senator White, Senator Avery, and Senator Schimek and I have been talking, as well as Senator Erdman, and to clarify things, Senator White just said that. Article III, Section 10 of the Nebraska Constitution states "No member shall be expelled except by a vote of two-thirds of all members elected to the Legislature, and no member shall be twice expelled for the same offense." That same rule is rearticulated in our Rules of the Legislature in Rule 2, Section 6, citing Article III, Section 10 of the Nebraska Constitution. Initially I was okay at first glance at Senator Avery's proposal here that's before us in LR4CA. I worry about two things: one, that it may be somewhat ambiguous when you put this in Article IV, Section 5 and then you look at Article III, Section 10, how one relates to the Legislature and one relates to civil officers. My thought would be...and then my second point, I guess, would be the use of the words "any misdemeanor." If I may, Mr. President, I'd like to ask Senator White a question. [LR4CA]

SENATOR STUTHMAN: Senator White, would you respond to a question from Speaker

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Flood? [LR4CA]

SENATOR WHITE: Yes, sir. [LR4CA]

SPEAKER FLOOD: Senator White, you and I were talking for a second ago about the breadth of the words "any misdemeanor." Obviously, if someone is convicted of a felony, they're removed from office under our State Constitution...under the state law, I should say. [LR4CA]

SENATOR WHITE: Yes. [LR4CA]

SPEAKER FLOOD: Use of the words "any misdemeanor," there is different language that we could consider, any felony or any misdemeanor involving a crime of moral turpitude, dishonesty, fraud. Are you familiar with language similar to that? [LR4CA]

SENATOR WHITE: Yes. The Bar Association, for example, uses language of that to discharge members of the bar for violations of those. And what they are looking at is, for example, lying under oath, which would be an intentional, knowing false statement as opposed to filing or signing a mistaken report. That's an intentional falsification. Theft for personal gain certainly qualifies, things like that. [LR4CA]

SPEAKER FLOOD: Thank you, Senator White. The reason I voted for impeachment on Mr. Hergert was that I felt, and I believe it was substantiated by the Nebraska Supreme Court ultimately in the conviction, that he knowingly and intentionally signed a campaign statement that he knew to be false. And that, I think, obviously rises to a crime of dishonesty, one of which I felt was worthy of impeachment. And that's why I voted that way. I would like to ask Senator Chambers a question because he was the architect of a lot of what we did with Mr. Hergert. [LR4CA]

SENATOR STUTHMAN: Senator Chambers, would you respond to a question from Speaker Flood? [LR4CA]

SENATOR CHAMBERS: Yes, I will. [LR4CA]

SPEAKER FLOOD: Senator Chambers, regarding the two points that I just talked about here with Senator White, would you be willing to consider modifying the change, or at least laying the bill over for today to take a little, you know, a day or two of work on it to come back with some proposals on this? [LR4CA]

SENATOR CHAMBERS: I don't mind laying it over because I don't want to rush it through. But my reaction is not to change the existing law in the constitution because there is a whole body of law relative to impeachment, not just in Nebraska but throughout the country at the federal and the state level. And I think the court is able,

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under the case law and its own decisions, to deal with any of these issues. And where the constitution gives a method for doing something, unless another provision repeals that, that stands. So there being specific constitutional provisions relative to senators... [LR4CA]

SENATOR STUTHMAN: One minute. [LR4CA]

SENATOR CHAMBERS: ...this that we do is not going to abolish that. We would have to change that. And senators cannot impeach and have a conviction, they can vote to expel. But the fact that they're allowed to do it does not mean they can expel for any reason because the Congress has that power and the U.S. Supreme Court ruled that they inappropriately used it when they prevented Adam Clayton Powell from being seated. So even though he was not expelled as such, it comes within that penumbra, I think, of that approach where a legislative body is going to try to stop or get rid of a member. I'm not concerned about that aspect, but I don't mind it being laid over for us to discuss these other matters. But it's Senator Avery's bill. [LR4CA]

SPEAKER FLOOD: Mr. President, would you...can I ask Senator Avery a question? [LR4CA]

SENATOR STUTHMAN: Senator Avery, would you respond to a question from Speaker Flood? [LR4CA]

SENATOR AVERY: I will. [LR4CA]

SPEAKER FLOOD: Senator Avery, would you... [LR4CA]

SENATOR STUTHMAN: Time. (Laughter) Senator Schimek...well, first of all, thank you, Speaker Flood, Senator Chambers, and Senator White. Senator Schimek, you are recognized. [LR4CA]

SENATOR SCHIMEK: Mr. President, I'd like to yield my time to Speaker Flood. [LR4CA]

SENATOR STUTHMAN: Speaker Flood, Senator Schimek yields you 4:50. [LR4CA]

SPEAKER FLOOD: I'd like to ask Senator Avery a question. [LR4CA]

SENATOR STUTHMAN: Senator Avery, would you respond to a question from Speaker Flood? [LR4CA]

SENATOR AVERY: Yes, again. [LR4CA]

SPEAKER FLOOD: Senator Avery, I agree with your second sentence, lines 10 and 11,

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in looking back at Mr. Hergert's conduct. Would you be willing to lay this bill over today or to ask that it be passed over to the next bill to allow us to look at some language to clarify dishonest actions? And obviously the entire body would then have a chance to look at it and review it before we went any further. [LR4CA]

SENATOR AVERY: I would certainly be willing to do that. But I do have my light on to make one point before we do. [LR4CA]

SPEAKER FLOOD: Well, if I can, I would yield the balance of the time that Senator Schimek gave to me to Senator Avery, if she would so consent. [LR4CA]

SENATOR STUTHMAN: Senator Schimek.. [LR4CA]

SPEAKER FLOOD: Seeing no opposition, let's just do that. (Laughter) [LR4CA]

SENATOR STUTHMAN: Senator Schimek, Speaker Flood yields you the balance of your original time, 3:46. [LR4CA]

SENATOR SCHIMEK: Thank you. If Senator Chambers wants any more time, I yield the...oh, Avery. Senator Avery, I'm sorry. I was on the phone. (Laughter) [LR4CA]

SENATOR AVERY: Thank you, Senator Schimek. I just want to make one point. The current language in the constitution reads "All civil officers" and we're not doing anything to change that except to say "A civil officer of this state shall be liable to impeachment for any misdemeanor in office." Now that's already in the constitution. All we're doing is adding language to include election activity. And please keep in mind that there are cases, there is a case history that defines what impeachable offenses are. I'm not sure we need to spell them out, but I'm certainly willing to talk with Senator Flood and Senator Chambers and others, Senator White, about ways we can bring this. So I am not going to oppose the move to lay it over. Thank you, Mr. President. [LR4CA]

SENATOR STUTHMAN: Thank you, Senator Schimek and Senator Avery. Senator Avery, you are next to speak and you are recognized. Senator Avery passes. By order of the Speaker, we will pass over this bill. Mr. Clerk, items for the record? [LR4CA]

ASSISTANT CLERK: Thank you, Mr. President. New bills: (Read LB1001A and LB606A by title for the first time.) Motion to be printed to LB1014 by Senator Erdman. (Legislative Journal page 737.) [LB606A LB1001A LB1014]

SENATOR STUTHMAN: Mr. Clerk, we will proceed on General File, LB952. Mr. Clerk. [LB952]

ASSISTANT CLERK: Mr. President, LB952, introduced by Senator Lathrop. (Read title.)

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The bill was read for the first time on January 14 of this year, referred to the Judiciary Committee, which placed the bill on General File with no committee amendments.
[LB952]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator White, your light is still on. Thank you. Senator Lathrop, to open on FA185. I'm sorry, open on the bill, LB952.
[LB952]

SENATOR LATHROP: Thank you, Mr. President and colleagues. LB952 is offered in response to an Attorney General's Opinion, requested by the Nebraska State Patrol. That opinion was authored by the Attorney General's Office June 12, 2007. The inquiry that prompted the Attorney General Opinion was whether or not the State Patrol could, under existing law, issue an administrative subpoena to providers of electronic communications to compel production of subscriber information. Pardon me. Administrative subpoenas are subpoenas compelling the production of documents issued by an agency without any judicial oversight whatsoever. The conclusion of the Attorney General's Office was that the State Patrol could issue a subpoena to a provider of electronic communications and that there is no statutory limitation limiting the nature of the use to which the administrative subpoena could be employed nor what matter could be compelled. The Attorney General's Opinion specifically noted that it was not passing on the constitutionality of this process, and in doing so it gave authority to the State Patrol to issue subpoenas to virtually any business to secure papers and documents or records of any customer. This opinion is troublesome in several respects. First, the opinion relies on 81-119 as authority for the proposition that the law permits administrative subpoenas; it simply does not. Statute 81-119 allows agencies of the executive branch to summon witnesses to hearings, the subject matter of which is the proper performance of the agency's function. Statute 81-119 contemplates compelling attendance at the hearing, not a subpoena simply to have someone produce records of another person. So the basis for the issuance of an administrative subpoena found in the Attorney General's Opinion does not exist in Nebraska law. There is a second concern. There is no limitation on who is the subject of such subpoenas. They could literally be sent, according to this opinion, to a phone company, an Internet provider, a bank, any business, a pharmacy, even a medical provider. The third difficulty with the opinion is there is no limitation on the information sought. The opinion notes that the request was for noncontent information from an electronic communication provider, but it specifically notes the following: We see nothing in this section which limits the subject area of an administrative subpoena. The State Patrol, according to this opinion, could literally issue subpoenas to gather phone calls, Internet content, bank records including checks, prescription information, and even medical records. The fourth problem is the opinion provides for a process that permits law enforcement to circumvent procedures this Legislature has put in place to protect Nebraskans from governmental intrusion. For example, 86-2,100 specifically provides a court order is necessary to get a pen register on a phone line. The pen register keeps track of calls in and out from a phone number.

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At the hearing, the colonel for the State Patrol acknowledged the administrative subpoena could be employed to get a phone bill with the very same information you would secure with a pen register. LB952 is not offered as a vehicle to criticize the Attorney General's Opinion. It is offered simply to provide a proper balance between the needs of law enforcement as they pursue criminals and the protection of Nebraskans to be free from governmental intrusion. LB952 clarifies that 81-119 may only be used to secure evidence at a hearing before an agency and may not be used for criminal investigations. LB952 has the support of the Nebraska State Bar. Thank you, Mr. President. [LB952]

SENATOR STUTHMAN: Thank you, Senator Lathrop. You have heard the opening on LB952. Mr. Clerk, for an amendment. [LB952]

ASSISTANT CLERK: Mr. President, Senator Lathrop would offer FA185. (Legislative Journal page 737.) [LB952]

SENATOR STUTHMAN: Senator Lathrop, you can open on FA185. [LB952]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, FA185 very simply strikes Sections 2 through 5 of the bill. When we originally looked at the issue of administrative subpoenas, we found a reference to those in the Telecommunications Consumer Protection Act and sought to eliminate them from that act. We have subsequently found out that there are other administrative subpoenas issued by county attorneys and by Attorney Generals that should be preserved. And so Sections 2 through 5 should be stricken from LB952 with the adoption of FA185. Thank you. [LB952]

SENATOR STUTHMAN: Thank you, Senator Lathrop. You have heard the opening on FA185. Senator Ashford, you are recognized. [LB952]

SENATOR ASHFORD: On the bill, Mr. President. I'd like to talk on the bill. [LB952]

SENATOR STUTHMAN: Thank you. Senator Chambers, you are recognized. [LB952]

SENATOR CHAMBERS: Mr. President, members of the Legislature, occasionally I've disagreed with Senator Lathrop, but on many other occasions I have agreed with him. He is thoughtful, he has evaluated and analyzed this situation in a way that I think is absolutely correct. This bill, when we enact it into law, as I think we should, is not going to in any way interfere with any legitimate law enforcement activity. During the hearing, there were comments, which I'm not going to go into, from some of those who spoke on the matter which indicated they didn't really understand the nature of the principles involved here; Senator Lathrop does. The committee endorsed sending this bill out here. And we understand full well what it is that we're doing. I don't know that the

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Attorney General or whoever wrote that opinion had given the amount of thought and analysis to the question then to the appropriate law that might apply as was called for. So when you wind up with an opinion from the Attorney General, it can be ignored by the Legislature, as I ignored several Attorneys General Opinions which said we could not receive expenses during session. But I'm a rare bird. I have made it clear that what the Attorney General writes is just words on paper. But there are others who are not of such a mind, and especially on a matter like this that could deal with an area of the law about which they don't know much, or even if they know something, they would not feel comfortable countering something in an Attorney General's Opinion. So I think it is very responsible and it is good legislating for us to enact a bill, such as Senator Lathrop is presenting, into law so we make clear in this area exactly what the circumstances are, what the situation is, and we will not get another opinion of that kind, which will allow the going on fishing expeditions broader than any I've seen asked for, even by rogue federal administrations. So I'm strongly in support of this bill. And I will not try to elaborate on what Senator Lathrop has presented, because sometimes an issue is presented so clearly that an attempt to even restate it can only cloud it, because when it has been stated as clearly as it can be, the only way you can equal that is to repeat it. And I don't desire to be repetitious this morning, but I do want to express very strong support for what he is presenting to us. Thank you, Mr. President. [LB952]

SENATOR STUTHMAN: Thank you, Senator Chambers. Senator Ashford, you are recognized. [LB952]

SENATOR ASHFORD: Thank you. I can just briefly talk now on the issue since the amendment is not significant change. I would just rise also and thank Senator Lathrop for bringing this bill. He became aware of this issue after reading the Attorney General's Opinion, and he alerted the committee to the issue, put the bill in LB952. The hearing was extremely informative. I was, quite frankly, impressed by Colonel Tuma of the State Patrol. He gave a very frank discussion about the current practice at the State Patrol. He certainly alleviated my concerns that if Senator Lathrop's bill would pass that it would not interrupt any important investigations, that the State Patrol has the ability, working with the Attorney General, to obtain necessary subpoenas and other court orders that it would need to do appropriate investigations. I just think it was a good piece of work by Senator Lathrop. And though there is not a lot of discussion it doesn't seem today on the bill, it is a very important issue. As Senator Chambers has suggested, we, as legislators, must be vigilant to make certain that our government is in balance with our fundamental beliefs that privacy is an essential element of freedom, and that privacy must be protected, and certainly this is what Senator Lathrop, in my opinion, is doing for us. And he's done all the work. He figured out the problem and drafted the bill and now, hopefully, we will advance it. So with that, Mr. President, I would certainly support the amendment and support the bill. Thank you. [LB952]

SENATOR STUTHMAN: Thank you, Senator Ashford. Senator Pirsch, you are

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recognized. [LB952]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Lathrop would yield for a question or two? [LB952]

SENATOR STUTHMAN: Senator Lathrop, would you yield to a question from Senator Pirsch? [LB952]

SENATOR LATHROP: Yes, I would. [LB952]

SENATOR PIRSCH: Very good. And, Senator Lathrop, with respect to...and I apologize, I was speaking with a constituent out...but with respect to FA185 there, the effective...what the amendment effectively does is that to strike Sections 2, 3, and 4? Is that correct? [LB952]

SENATOR LATHROP: Yes, it is. [LB952]

SENATOR PIRSCH: Okay. Thank you very much. I appreciate that. I don't have any other questions for Senator Lathrop, just a statement. I guess, at this point in time I do appreciate...I think...and I would urge everyone to vote for the floor amendment. I think that it makes it a better bill. The floor amendment, I think, which strikes out language that would, in talking with law enforcement, they believe that it would be a crippling sections, and so I do appreciate taking that out. With respect to the remaining section, Section 1, you know, it certainly doesn't have the crippling effect of the other sections as we've been discussing it. I, however, do have certain concerns about that. And what I would like to do is to, rather than, at this point in time I'd be amenable to rather than, I guess...I guess I wanted to go on the record as saying that I do have certain concerns with the remaining section. I'm not sure that those cannot be ironed out, but in a spirit of cooperation and looking towards common ground, what I'd propose is passing this amended bill here today through General File with the understanding that, you know, we'd work together to address those concerns that I have over the course, between General File and Select File and see if we can't hash those out. And so given that kind of caveat, I would ask the body at the very least to vote for...voting the floor amendment onto the bill at this point in time. And again, it's my intention to work with Senator Lathrop then to see if we can't address the remaining concerns regarding Section 1 during the interim, between General File and Select File. Thank you. [LB952]

SENATOR STUTHMAN: Thank you, Senator Pirsch and Senator Lathrop. Senator Gay, you are recognized. [LB952]

SENATOR GAY: Thank you, Mr. President. Would Senator Pirsch yield to a few questions? [LB952]

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SENATOR STUTHMAN: Senator Pirsch, would you yield to a few questions from Senator Gay? [LB952]

SENATOR PIRSCH: I would. [LB952]

SENATOR GAY: Thank you, Senator. Senator, I'd be the first...I was a little remiss, I was kind of listening in and I missed Senator Lathrop's open. But I've heard a lot of legal talk going back and forth for us nonlawyers. Colonel Tuma was there from the State Patrol as an opponent of this. And I saw you were there and didn't vote on this. Now you're saying, well, there has been a few things to make this better and I'll work with them on Select File. Now can you describe, and if you can't, I'm going to ask Senator Ashford, but can you describe what some of the concerns were that he had with the bill and what you're saying now that it's been fixed or improved? Can you just give us a summary of what went on during... [LB952]

SENATOR PIRSCH: Yeah. And let me say this, from my perspective, and I'm just speaking from me only with regards to Sections 2, 3, and 4. I did...I thought that those were, at least in speaking with the State Patrol, that those would be crippling provisions, ones that would...certainly could not, I don't think, fix. But in light of the fact that those are being taken out, what remains, I think, is not something that perhaps, as it currently exists, is, I think, something that we view as a positive development. Is it within the realm of something that we can reach a cure, some common ground on? I think that that possibility exists at this time with regard to the amended version. But again, I don't want to say that that is, you know, what will certainly occur. I mean, we'll...I think that that possibility exists. With respect to the concerns that were brought out by the State Patrol during the testimony, they I think spoke to exigent circumstances where the alternative would be in certain situations obtaining court orders. Well, in certain situations, I believe, they brought up situations where either a person who was suffering Alzheimer's, but who had a cell phone on him, and they needed to get a location on that Alzheimer's patient who had wandered away, and to do so would require cooperation among cell phone companies. So to get the ping location on that individual, which would be a time is of the essence type of situation, and again situations where somebody was perhaps suicidal and not identifying "themselves," the only information the police have, and 911 having to work on is the number of the cell phone that is called from the tower. And so having the ability to identify which individual it is who was indicating that he's going to take his life in a short period of time may be another instance. Situations where there may be, I think, a robbery at a bank, I think was one that was cited, whereby they took a hostage and they were pinging in on the cell phone of the hostage, it would be a time is of the essence type of situation, and yes, there is a, you know, courts do have the ability to order, you know, those types of release of information from cell phone companies. But that would require, especially in western counties it's sometimes hard to locate judges at their home, and if it does, it takes, you know, it could take hours. And so in those situations they expressed the idea that... [LB952]

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SPEAKER FLOOD PRESIDING [LB952]

SPEAKER FLOOD: One minute. [LB952]

SENATOR PIRSCH: ...the idea that they wanted to make sure that there was a workable paradigm for them to have the ability to, you know, intercede in those type of situations on an expedited basis. So that was one of the, I think, concerns that was brought up at the committee meeting. And again, I think that, you know, I'm not sure that we can't reach common ground on this. And that's why, especially in the spirit of good faith, Senator Lathrop has amended the bill here today. I don't have any objection. You know, Senator Lathrop, I think, is pretty renowned for being agreeable to work on bills and make them better. So towards that spirit, we would, you know, I think, given more time, be able to reach a better conclusion as to whether that's possible or not. [LB952]

SENATOR GAY: All right. Thank you, Senator Pirsch. I hit my light again. I'm going to ask probably... [LB952]

SPEAKER FLOOD: Time. [LB952]

SENATOR GAY: Thank you. [LB952]

SPEAKER FLOOD: But your light is on next. Before we go there, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR240, LR241, and LR242. Continuing with discussion on LB952 and FA185, Senator Gay, you are recognized. [LB952 LR240 LR241 LR242]

SENATOR GAY: Thank you, Mr. President. Thank you, Senator Pirsch, for describing how this could be used in an emergency situation. It sounds like...I'm just not familiar with all the laws of how these work. And I could see in an emergency situation quick action is necessary. But I guess I would ask would Senator Lathrop yield to a question? [LB952]

SENATOR STUTHMAN PRESIDING [LB952]

SENATOR STUTHMAN: Senator Lathrop, would you yield to questions from Senator Gay? [LB952]

SENATOR LATHROP: Yes, I will. [LB952]

SENATOR GAY: Thank you, Senator Lathrop. Senator Lathrop, I guess, I'm looking for another...can this be used in a criminal investigation and some of these things when they're asking for electronic records? Or can you describe...give me a situation? [LB952]

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SENATOR LATHROP: I'd be happy to address what could happen before, and what will not be able to happen now and how law enforcement will not be affected, I think, significantly in any respect. Right now, the State Patrol...somebody in the State Patrol's Office, if you read the Attorney General's Opinion, this is what they could do. They could prepare something from the Attorney General's Office, put the Attorney General's seal on it, give it the appearance of the official office of the Attorney General, and send a request out to your pharmacy to get copies of the medications you've been using for the last year, or they could send it to the phone company to get copies of the numbers that you've called or the people that have called you. That's law enforcement, on its own, no judicial supervision, no supervision by the county attorney or the Attorney General's Office. The problem is the statute doesn't give them that authority. I don't know where the Attorney General...they said, in essence, the statute gives them that authority. It doesn't. What this does is it says very clearly the subpoena process provided for in 81-119 will not be used for administrative subpoenas in criminal investigations. What that means instead is that law enforcement will get court orders, or they will go to the county attorney who has their own authority to issue subpoenas. There's certain limitations on that just to make sure that they're not sent out willy-nilly. But the law enforcement still can go to the Attorney General or they can go to a county attorney and get this information, even on an exigent circumstance. [LB952]

SENATOR GAY: Okay. Thank you, Senator Lathrop. So basically what your...slows down the process in a way. When Senator Pirsch discussed an emergency situation though, I need it now and I need it now. I've got a hostage situation, he used, how do I go about doing that now? [LB952]

SENATOR LATHROP: They would prepare...first of all, this bill looked like it wasn't going to run into any trouble, until these guys showed up this morning in the hallway. So I tried to work with them and agreed to talk to them more between General and Select. But anything that they could do before, the county attorney can probably do still under a provision that I wasn't aware of, but the county attorney has a limitation. It must be reasonably related to a criminal investigation, which is the difference between a fishing trip and going and investigating criminal activity. [LB952]

SENATOR GAY: Okay, Senator Lathrop. And I...the guys in the hallway...I'm really concerned on my own because of the fishing trip aspect. I don't like...I don't think that we should be able to go out and just ask for Senator Ashford's records because I believe he might be up to something or you know, so I genuinely am concerned about this. And I'm not a legal eagle, like many of you in here. I heard the discussion. So I'm just trying to clarify for the rest of the body what this does, how it can be used in the real world situation. So I appreciate that. [LB952]

SENATOR STUTHMAN: One minute. [LB952]

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SENATOR GAY: What has to be...thank you. What has to be done between now and then, you know, I'm interested in finding out. I know you'll work to do that. [LB952]

SENATOR LATHROP: Right. And I have agreed to talk and meet with the State Patrol to make sure if they can give me examples of when they need this authority in exigent circumstances and they couldn't use the county attorney for some reason. I'm having a hard time believing or recognizing that that situation even exists where the law doesn't permit them to go do something even without a warrant or an order right now. But I'm willing to listen to them and to accommodate them, if that can be done. [LB952]

SENATOR GAY: Okay. All right, thank you. Thank you, Mr. President. [LB952]

SENATOR STUTHMAN: Thank you, Senator Gay and Senator Lathrop. (Visitors introduced.) Senator Chambers, you are recognized. [LB952]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is Senator Lathrop's bill. I'm not speaking on behalf of Senator Lathrop or anybody else, but only myself. I'm sick and tired of these people popping up in the lobby and getting Senator Pirsch to stand up here without even understanding thoroughly himself what the issue is and saying something is wrong with this bill. And he doesn't know because he doesn't see anything wrong with it. They tell him. And I want them to hear me. Senator Pirsch can speak for himself and do as he pleases. These county attorneys, these cops, and these other chuckleheaded fools who cannot read the law and are accustomed to getting away with all kind of cutting of corners are going to hear from me, even if the body decides not to do the right thing. To his credit, Senator Pirsch is not trying to stop the bill. He's probably hoping that they can give him something better than what they did so far, but they start getting all in a tizzy. And I will say this, one of the things that I have more contempt for than anything else is when law enforcement misleads and deceives the public. And, Senator Gay, here's how that can happen, if you didn't get it from what Senator Lathrop said and you were not at the hearing. Somebody puts a stamp on a piece of paper to make it look like an authoritative document that compels you to do something, and there is nothing in the law that justifies that, and the paper is written in such a way as to give deniability to the law enforcement agency which is deliberately trying to mislead and deceive you. It will not say, this is not a legal requirement that you respond to this. That's full disclosure. They know that when people see the stamp of a law enforcement agency they think, I've got to come. I dealt with a situation not many days ago involving a young woman, and I may have touched on it here, who was assaulted several times at North High School, and the school officials seem to be going along with the assaulter, not the young woman. She wound up getting some statement from the Douglas County Attorney's Office, some division, that could require juveniles to come in for some kind of assessment to see if they want to avoid charges being brought by agreeing to public or community service or diversion. And she hadn't done anything.

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She was the victim. Fortunately, I was able to help her get a lawyer, and she's now being worked with by the Victim Assistance Task Force, because the schools were wrong, and Don Kleine's office was wrong. If the mother looked at this, she would have thought she had to take her daughter down there to this meeting. The lawyer pointed out, that's not necessary, and she will not be coming. Law enforcement people know how to trick the public, and that's what they spend time doing. Senator Pirsch knows...now he didn't prosecute felonies. He was down there where they play in the sandbox with misdemeanors. But they can lie to you. The courts allow them to lie to you, to trick you to say somebody else has said such and such a thing, when they didn't, in fact, say it at all. They can lie on the witness stand. They'll lie like the guy who was the former sheriff of your county, Pat Thomas, misrepresent what they said and why they said it, and deny that they said what other people will show that they said. But one of the principles of law enforcement 101 when you're in the academy is if you are in hot water, lie. And if you once tell that lie, never back away from it. Lie, lie, lie, and if they bring Jesus and all the angels in heaven and they're preceded by the Mormon Tabernacle Choir singing hallelujah, you stick to that lie. And if they ask you, are you saying the Lord Jesus Christ and these angels are lying, well, you're a liar, so you know how to tap dance, you say, well, I'm not saying anything about them, I'm just saying that I'm...I'm just saying what I said. [LB952]

SENATOR STUTHMAN: One minute. [LB952]

SENATOR CHAMBERS: I'm responsible for me. And cops have lied and they trick these legislators. The legislators see a uniform and a badge or some hack who works for the county attorneys or the Attorney General's Office and they are put in awe, and say this is what we ought to do. We are the legislators. And when these people have the opportunity to come to these hearings, that's what they ought to do. But some of them, Senator Gay, don't want to confront me. They'll be on the record, and they don't want to be on the record. This bill I'm glad is going to move forward. [LB952]

SENATOR STUTHMAN: Time. [LB952]

SENATOR CHAMBERS: Senator Lathrop... [LB952]

SENATOR STUTHMAN: You may continue, Senator Chambers. [LB952]

SENATOR CHAMBERS: Senator Lathrop is far more tolerant than I am. I have been through this mess with these deceivers, these dissemblers, these disingenuous cowards for so many years that I have no tolerance for them whatsoever. And the senators are going to have to realize that we are a body that makes the laws and establishes the policies of this state. We are a coequal branch of this tripartite government and this Legislature should not be run roughshod over by the executive branch, which includes prosecutors, or the judiciary. If you let these people walk on you,

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they're going to call you throw rug, carpet or rug, and they will walk on you. Judges will come here whining always for an increase in salary, but they're not interested in increases in salaries and benefits for the employees of the court. That's the way them apples fall out. And somebody needs to be on this floor of the Legislature who will let those people know that there may be a price to pay, because they're going to have something they want which ordinarily I wouldn't have a problem with. The cops will sick people...sick my fellow colleagues on me, like they did Senator Pirsch. Had him opposing a bill for saying something that it didn't say, I'm talking about, in case he forgot, my bill which will expose to public scrutiny certain disciplinary actions taken against certain cops. He was still talking about shining police cars and shoes when all that had been eliminated, but the cops were so used to misleading senators, they didn't even tell him the truth about what the bill did, and he didn't read the bill. Oh, Senator Pirsch is going to be so glad when I'm out of here. He'll probably be happier than those who circulated the petition to get term limits. When people stand on this floor...y'all quit looking around like I'm doing something wrong. He's a grown man, as are the rest of you. And you get out of line in a way I think you're out of line, and I'll call you by name and say what's on my mind and invite you to speak back to me. I'm not in a position to invoke cloture on each senator where I say what I've got to say and you cannot say something back to me. I welcome, I welcome being talked back to. I welcome being challenged. I welcome being put to the test. And here's something else I will say, I don't care how strongly I advocate a position of mine or advocate for a position of somebody else. If I am shown by evidence and facts that that position that I took was inaccurate, that I was mistaken, that circumstances have changed, I will change. I see nothing to be gained by me to hold to a position that I know is false. I don't gain anything from holding to a position that I know is false, I know that it's wrong. That's why these lobbyists don't come running to me saying, Ernie, run in there and tell the Legislature don't do this. Now you don't know why they shouldn't do it, but just let them know somebody out here doesn't think they should do it. Senator Pirsch,...how much time do I have, Mr. President? [LB952]

SENATOR STUTHMAN: 1:15. [LB952]

SENATOR CHAMBERS: And this is my third time, correct? [LB952]

SENATOR STUTHMAN: Yes. [LB952]

SENATOR CHAMBERS: I got to get it in quickly. There was this poor fella, and he was told, he was fighting for the Confederacy, that you've got to fight and lay down your life for the Confederacy. And this poor fella didn't even know what Confederacy meant. They came and pulled him off the farm. And so he said, well, okay I'll do it. So then he was supposed to go tell the guy at the next farm the same thing. So he told the guy at the next farm the same thing. And that guy's name happened to be Senator Pirsch, not Senator Pirsch. And he said, you're telling me that I should go down there and lay down

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my life? For what? He said, well, I don't know, but there be's them in high places and they know. And they told me, so I'm telling you. So now you all are being told, use your brains, use your judgment. And even if you wind up making a mistake, make it on the basis of what your best judgment tells you. And if you're following your best judgment, if you're shown by facts that your judgment was in error, you'll correct the error. We want to be right and correct here. But we're not always right. [LB952]

SENATOR STUTHMAN: Time. [LB952]

SENATOR CHAMBERS: We're not always correct, but I am. (Laughter) [LB952]

SENATOR STUTHMAN: Thank you, Senator Chambers. Seeing no other lights, Senator Lathrop, you are recognized to close on your amendment. [LB952]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Again, FA185 simply removes Sections 2 through 5 of the bill, which is fine by me. It relates to the telecommunications act. It allows LB952 to retain Section 1, which is the heart and the soul of the bill. And I'll address that when we get to my close on LB952. Thanks. [LB952]

SENATOR STUTHMAN: Thank you, Senator Lathrop. You have heard the closing on the amendment. The question is, shall the amendment be adopted? All those in favor vote aye; all those opposed vote nay. Please record. [LB952]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of Senator Lathrop's amendment. [LB952]

SENATOR STUTHMAN: The amendment is adopted. We continue debate on LB952. Seeing no lights, Senator Lathrop, you're recognized to close on LB952. [LB952]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the discussion today and the endorsement really of Senator Chambers and Ashford who did participate in this discussion when it was before the Judiciary Committee. There is always going to be in the law a tension between law enforcement and our right to privacy. What LB952 does is recognize that if we're going to issue administrative subpoenas that should be done by the county attorney or the Attorney General's Office and not by law enforcement officers. There are several reasons why the Attorney General's Opinion, I think, was misguided. But LB952 will address those concerns and will eliminate the process of allowing the State Patrol to issue administrative subpoenas without any limitation whatsoever. I'd appreciate your support. Thank you. [LB952]

SENATOR STUTHMAN: You have heard the closing on LB952. The question for the body is the advancement of LB952. All those in favor vote aye; all those opposed vote

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nay. Please record. [LB952]

ASSISTANT CLERK: 30 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB952]

SENATOR STUTHMAN: LB952 does advance. Mr. Clerk. [LB952]

ASSISTANT CLERK: Mr. President, the next bill, LB1049, introduced by Senator Erdman. (Read title.) The bill was read for the first time on January 18 of this year, referred to the Natural Resources Committee, which placed the bill on General File without committee amendments. [LB1049]

SENATOR STUTHMAN: Thank you, Mr. Clerk. Senator Erdman, you are recognized to open on LB1049. Mr. Erdman. [LB1049]

SENATOR ERDMAN: Thank you, Mr. President. [LB1049]

SENATOR STUTHMAN: Thank you. [LB1049]

SENATOR ERDMAN: Equal opportunity this morning, Mr. President. You cut the speaker off and you respond to my comments. I appreciate your attentiveness. LB1049 makes essential and fundamental reforms to the qualifications and the terms of Game and Parks commissioners. There are approximately three main components and, depending upon other amendments that may follow, there may be additional items to this bill or not. But let me briefly go through the green copy version of LB1049, which the Natural Resources Committee advanced unanimously 8 to 0 for your consideration. This is legislation that I have been working on for a number of years and believe it to be essential in the duties and responsibilities of oversight of not only our parks in the state of Nebraska and wildlife, but in the general duties of the Game and Parks commissions and the authorities that we have governing them. Currently, we have eight members on the Game and Parks Commission. No more than four members shall be affiliated with the same political party. That provision has been in law, I believe, since the commission was organized with this structure. Ironically, if you go back and you can either find this in your Blue Book, or you can read it in other publications, there has been a number of changes happen to the governance of the Game and Parks Commission. At one time the Governor "themselves" served as the chair of the commission. And so we have evolved and we have changed over time. When that provision was added about the political party affiliation, I also believe it was at a time when we were elected in the state, especially the Legislature, on a partisan basis. And the idea at that time, as it has generally carried over into different provisions of different commissions or laws, is to maintain, because other bodies are elected or represented by a partisan basis, to maintain that balance. Here's the problem with the current law. Candidate X decides that they want to be a member of the Game and Parks Commission. They happen to be

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the same political party as four of the existing members of the commission. So just prior to them filing for...filing as a candidate with the Governor's Office to be appointed, they decide to change their party affiliation from Republican to Independent, Democrat to Independent, Republican to Democrat, however. And so what they're doing is they're subverting the intent of the law. LB1049 would state that for the purposes of their appointment the political party affiliation of each prospective member or commissioner shall be determined as of the state general election prior to his or her appointment. There's a saying that goes around, I believe Virginia Smith once coined it, I used this at the hearing, that you're known by the brand that you wear in politics. And if you're voting in a general election, that's probably the brand you usually wear. If you want to be an appointee to a commission, the theory behind the language is to ensure that that brand is the same brand that you wear on the commission, but most importantly that there is a balance of political perspectives on the commission. LB1049, as introduced, would apply only in the purposes of appointment. I have an amendment that I filed that would make it for any time when they're a member of the commission, and I believe that closes a loophole that was pointed out at the committee hearing. The second issue that is in the bill, LB1049, changes the length of a term of a commissioner from five years to four. And I have a copy of all of the noncode agencies, their terms, their lengths of office, and what they can be appointed to, and when they can be appointed, and how that plays out. It is common practice, whether you're a state senator, Governor, other similar positions in the state to be appointed to a commission, that the term is generally four years. By doing this, it also provides that the Governor has the opportunity to appoint these individuals during their term. Whether or not you like that idea or not, it also provides an additional benefit. Right now the ability to put individuals on the commission is based on the existing requirements, whether they be in production agriculture or not. And if all members come up within that time frame, you have more flexibility to ensure that there is greater opportunity for service from all sectors. And by lowering it to a four-year term, it not only provides consistency with our office, with the Governor's Office, and other similar positions, it also provides greater flexibility in the appointment process. So prior to January 1, 2009, those individuals that are appointed shall continue to be appointed to their five-year terms, but anybody appointed after January 1, 2009, shall be appointed to four-year terms. Right now in the law we don't allow individuals to be reappointed. And with the exception of one agency, noncode agency dealing with abstractors, no one else has that restriction. No other commission has a term limit that is as severe or as restrictive as what we currently have in place. LB1049 would allow a commissioner to be reappointed to a consecutive term or to a nonconsecutive term at a later date, depending upon how they would like to be appointed and confirmed by the Legislature at the wish of the Governor. We get appointed to a...we get the opportunity to serve two terms. The Governor gets the opportunity to serve two terms. State Treasurer gets two terms. President gets two terms. Most other commissioners have the opportunity to be reappointed on other commissions. This is unique. The reason why I think this is important is this, those of you that are new to this legislative body know that it takes a little bit of time to get up to

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speed on how this process works. The same thing happens with any other commission and with any other board. And no matter how talented you are and how much you study and how much learn, on-the-job training is vital. If this is the only agency or the only commission that has authority over the Game and Parks Commission, they should have the same opportunity for oversight that we, as members of the Legislature, do, and that is they should be eligible to be reappointed to a consecutive term. We're eligible to be reelected to a consecutive term, then we have to sit out. It provides consistency. The other thing it also does is it provides greater accountability. The argument continually is made on this floor that when some members of this body leave that certain groups will be able to have an easier time to pass legislation because the traditional or the institutional knowledge will not be there. The same can be the case for any of these other commissions. And that's why they're provided the opportunity for reappointment. I believe that opportunity should also be provided to the Game and Parks Commission. So LB1049 would allow commissioners to be reappointed to a consecutive term or a nonconsecutive term, but they would have that option. Currently, they're only eligible for reappointment if it's a nonconsecutive term. Finally, it provides a lifetime ban, a lifetime term limit. If an individual serves two terms, after the effective date of LB1049, they have served their state in this capacity and shall not serve the state in this capacity again. The idea behind that is not to say that people shouldn't have the opportunity, as we as members of the Legislature do, to come back, but rather to recognize that there are a number of people that would greatly appreciate the opportunity to apply for this position. And I'm sure we'll have that discussion as well about the global scheme here. But by limiting it, you ensure that people only have those two terms. There is a great deal of interest in serving on the Game and Parks Commission, a great deal of interest. And if we can do something to encourage individuals or to have better opportunity for other individuals to serve, we should consider that. That's essentially what LB1049 does in the law. The members of the Game and Parks Commission, I believe, must be equipped and enabled to set appropriate policy for the commission in fulfilling their duties under the law. It is imperative that the natural resources of our state, including wildlife and state parks, have appropriate oversight and leadership from the members of the commission, that they are capable of directing the administration and the staff of this vital commission. And I believe that LB1049 makes major accomplishments and makes major improvements in accomplishing that goal. I continually will work with groups interested in this area, as I have pledged to others. I'm grateful that the Natural Resources Committee has advanced the bill and look forward to your discussion. Thank you, Mr. President. [LB1049]

SENATOR STUTHMAN: Thank you, Senator Erdman. Mr. Clerk, items for the record? [LB1049]

ASSISTANT CLERK: Thank you, Mr. President. An announcement: Judiciary will hold an Executive Session this afternoon at 1:30 in Room 1113. Your Committee on Enrollment and Review reports LB797, LB1014, LB606, and LB1096 to Select File.

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Amendment to be printed by Senator Erdman to LB1049, and Senator Schimek to LB1049. Name adds: Senator Pahls to LB606; Senator Pirsch to LB962; Senator Howard to LB1001; and Senator Pahls to LB1096. (Legislative Journal pages 738-744.) [LB606 LB797 LB962 LB1001 LB1014 LB1049 LB1096]

And I do have a priority motion. Speaker Flood would move to adjourn until Tuesday, March 4, 2008, at 10:00 a.m. []

SENATOR STUTHMAN: You have heard the motion for adjournment. All those in favor say aye. All those opposed say no. Motion carried. Thank you. Have a nice weekend. []