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Floor Debate  
March 26, 2008

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this the forty-seventh day of the One Hundredth Legislature, Second Session. Our chaplain for today is Senator Norm Wallman. Please rise.

SENATOR WALLMAN: (Prayer offered.)

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

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

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

ASSISTANT CLERK: I have no corrections today.

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

ASSISTANT CLERK: One item. Senator McDonald, an amendment to LB1055 to be printed. (Legislative Journal pages 1083-1084.) [LB1055]

SENATOR LANGEMEIER: Thank you. We will now proceed with the first item on this morning's agenda, General File, LB958A. [LB958A]

ASSISTANT CLERK: Mr. President, LB958A was introduced by Senator Ashford. (Read title.) [LB958A]

SENATOR LANGEMEIER: Senator Ashford, you are recognized to open on LB958A. [LB958A]

SENATOR ASHFORD: Thank you, Mr. President, members. This is the A bill to LB958.

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There are two distinct parts to the bill. The first part deals with the instant check system which LB958 implements. With the passage of LB958 we would move from a permit system to an instant check system for purchase of all handguns. The State Patrol would be responsible for amassing the records that would be sent through the federal database computer system to federal firearms' dealer license holders, who would check each transaction for handgun purchases. In Nebraska today, all non-handgun purchases go through this instant check system. The handguns then would also be included in this instant check system. It is a comprehensive database where checks are made on individual records, criminal records as well as mental health records, from across the country. It's my belief that this is a more comprehensive system. It's certainly quicker for the purchaser of handguns, but it is a comprehensive system. And with the passage recently of federal law on mental health records, there is an opportunity for Nebraska to access federal money to continue to upgrade its mental health records to even make these checks more comprehensive, resulting in more, in my view, a safer environment for handgun purchases. The second part of the bill deals with the study that's being done by the Crime Commission. It sets aside an estimated amount of money that would be used by the Crime Commission to, as the body may recall, studying issues such as gun tracing and the illegal trafficking of firearms; issues that are important to law enforcement as they investigate crimes involving firearms. With that, Mr. President, I would urge the advancement so that the A bill can follow LB958 which is on Select File. [LB958A LB958]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on LB958A. The floor is now open for discussion. Seeing no lights on, Senator Ashford is recognized to close. Senator Ashford waives closing. The question before the body is, shall LB958A advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? [LB958A]

SENATOR ASHFORD: Let me...I'm just thinking people are roaming in as we speak--or not speak, but...well... (laughter). [LB958A]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB958A]

ASSISTANT CLERK: 25 ayes, 1 nay, Mr. President, on the motion to advance the bill. [LB958A]

SENATOR LANGEMEIER: LB958A does advance. Mr. Clerk, next item on the agenda, LB1058. [LB958A]

ASSISTANT CLERK: Mr. President, I do have an announcement prior to that. The Retirement Committee will hold an Executive Session in Room 2022 at 9:15 a.m. That's the Retirement Committee in 2022.

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With respect to the next bill on the agenda, LB1058, which was introduced by Senator McDonald. (Read title.) The bill was read for the first time on January 18 of this year. It was referred to the General Affairs Committee, which reports the bill to General File with committee amendments attached. (AM1866, Legislative Journal page 586.) [LB1058]

SENATOR LANGEMEIER: Thank you. Senator McDonald, you're recognized to open on LB1058. [LB1058]

SENATOR McDONALD: Mr. President, members of the body, this bill represents another part of my continuing work on Nebraska's problem gambling program. The original LB1058 would have extended the current distribution of lottery proceeds until the year 2012, and made changes to the provision of the gambling assistance program. The adopted committee amendment replaces the bill and serves to strengthen the duties of the State Advisory Committee on Problem Gambling and Addiction Services. Since AM1866 will become the bill, I will explain the bill in more detail when I open on the amendment. [LB1058]

SENATOR LANGEMEIER: Thank you, Senator McDonald. As you have heard, there are committee amendments offered by the General Affairs Committee. Senator McDonald, as Chair of that committee, you are recognized to open on AM1866. [LB1058]

SENATOR McDONALD: Mr. President, members of the body, AM1866 removes the first section of the bill and assigns the State Committee on Problem Gambling and Addiction Services a number of duties related to the management of the gamblers assistance program and Compulsive Gamblers Assistance Fund. As you know, the issue of problem gambling has been very important to me. I've spent a great deal of my time in the Legislature working to make sure that the compulsive gamblers assistance program in Nebraska has remained funded and efficient. When the program started, which was when the lottery was created, the advisory committee was a more active participant in the administration of the program. I want to get the committee back to the way it was, and I believe this bill will make that possible. Here is what the committee amendment does. The amendment clarifies the Legislature's intent that the committee provide leadership and direction of the program, and that the Gamblers Assistance Fund is to be used primarily for treatment. It changes the name of the committee by eliminating the word "advisory." It requires the committee to appoint its chairperson, conduct regular meetings, and meet upon the call of the chairperson or a majority of its members. The amendment states that the committee is to be responsible for developing and recommending guidelines and standards on how the division should use the Compulsive Gamblers Assistance Fund. It also authorizes the committee to develop recommendations regarding the evaluation and approval process for provider applications for treatment funding, the use and expenditure of funds for education and prevention of problem gambling, and the creation and implementation of outreach and

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educational programs. Based on the recommendations of the committee, the division is to adopt guidelines and standards for the distribution and disbursement of funds for the program's services. Finally, the committee and the division are to submit to the Governor and the Legislature an annual report of its activities. According to current language, the members of the committee are required to show a demonstrated interest in commitment and specialized knowledge, experience, or expertise relating to problem gambling and addiction services. You will notice on the committee statement that Dr. Scot Adams, representing Health and Human Services, testified against this bill. We revised the provisions of the bill in the committee amendment to address his concerns, and now HHS is now in support of the bill. We were able to work together and compromise on language that everyone agrees with. In fact, the assistance and support of the administration, the division, and especially Dr. Adams, were all able to improve the bill and clarify its purpose. In working with Dr. Adams, who is the head of Behavioral Health within Health and Human Services, I have found that he has a genuine concern for the success of the gamblers assistance program, and I am grateful for the amount of time and effort that he has put into addressing this program. We need these changes to improve the program and to help the committee, and they are necessary to make sure we are providing the best possible services to the residents who need help. I respectfully ask for your support and would be happy to answer any questions you might have. [LB1058]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Mr. Clerk, for a motion. [LB1058]

ASSISTANT CLERK: Mr. President, Senator McDonald would offer AM2122 to the committee amendments. (Legislative Journal page 850.) [LB1058]

SENATOR LANGEMEIER: Senator McDonald, you are recognized to open on AM2122. [LB1058]

SENATOR McDONALD: Mr. President, members of the body, this amendment is just a clarification on the name of the committee and one of its duties and does two things. First, it deletes the word "and Addiction Services" from the name of the Committee on Problem Gambling. So the name of the committee would be State Committee on Problem Gambling. This is simply to be clear on what the committee is about, and is at the request of a few longtime committee members. Second, it adds "the review and use of evaluation data" on page 2, subsection (4), which lists the items in which the committee is to develop recommendations. Evaluation data are used to check on the performance providers, and it is a provision that we feel was inadvertently left out of the committee statement. These are simple clarifications in which Health and Human Services agree, so I ask for your support. Thank you. [LB1058]

SENATOR LANGEMEIER: Thank you. You have now heard the opening on LB1058,

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the committee amendments, and AM2122 to the committee amendments. The floor is now open for discussion. Senator Wallman, you are recognized. [LB1058]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator McDonald yield to a question? [LB1058]

SENATOR LANGEMEIER: Senator McDonald, would you yield? [LB1058]

SENATOR McDONALD: I would. [LB1058]

SENATOR WALLMAN: Is there any chance we can get some money from Iowa to help us out here? (Laugh) [LB1058]

SENATOR McDONALD: Well, I wish we could. Not going to happen, so we have to take care of our own here. In fact, one reason I was interested in pursuing this is because when I found out the 1-800-BETSOFF number is only for Iowa, we needed to make sure that we had a number that was recognizable in the state of Nebraska so that the people with an addiction and a problem could find help. [LB1058]

SENATOR WALLMAN: Thank you. I do think this is needed because I have a young friend who did spend time in prison because of his gambling problem. And so I think this is a good way to start. And it's sad that we promote gambling with lottery tickets and all this stuff. We actually promote it in this state as well as other things. But...so if a few people need help, I think this is a good start. Thank you, Mr. President. [LB1058]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Are there any others wishing to speak on AM2122? Seeing none, Senator McDonald, you are recognized to close. Senator McDonald waives closing. The question before the body is, shall AM2122 be adopted to the committee amendments? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1058]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of the amendment to the committee amendments, Mr. President. [LB1058]

SENATOR LANGEMEIER: AM2122 is adopted. We return now to discussion on AM1866, the committee amendments. Is there anyone wishing to speak? Seeing no lights on, Senator McDonald, you're recognized to close on committee amendments, AM1866. [LB1058]

SENATOR McDONALD: Mr. President, members of the body, the amendment, of course, replaces the bill, and now the amendment is in its correct form. So I appreciate your support on the amendment. Thank you. [LB1058]

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SENATOR LANGEMEIER: Thank you, Senator McDonald. You have heard the closing on AM1866. The question is, shall AM1866 be adopted to LB1058? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1058]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of the committee amendments, Mr. President. [LB1058]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to discussion on LB1058, the bill itself. Seeing no lights on, Senator McDonald, is recognized to close. Senator McDonald waives closing. The question before the body is, shall LB1058 advance? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1058]

ASSISTANT CLERK: 30 ayes, 0 nays on the advancement of the bill, Mr. President. [LB1058]

SENATOR LANGEMEIER: LB1058 does advance. Mr. Clerk, next item on the agenda, LB1065. [LB1058]

ASSISTANT CLERK: LB1065 was introduced by Senator Louden. (Read title.) The bill was read for the first time on January 22 of this year, referred to the Committee on Natural Resources which reports the bill to General File with committee amendments. (AM1991, Legislative Journal page 687.) [LB1065]

SENATOR LANGEMEIER: Senator Louden, you are recognized to open on LB1065. [LB1065]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. The purpose of this bill is to provide a process for the interconnection of qualified renewable electric generation facilities by distribution utility customers. A qualified renewable energy generation facility uses solar, wind, biomass, or hydropower as its energy source; is on property owned or controlled by the customer; operates in parallel with the distribution system; is intended to offset all or a portion of the energy consumed on site; and meets applicable safety and reliability standards. For small generators of ten kilowatts or smaller, the bill mandates net metering. However, any utility may allow generators of more than ten kilowatts to net meter, as well. Energy is exchanged on a 1:1 ratio, and excess energy is paid out at the average wholesale energy cost for the month of generation. Energy needs beyond a customer generation are billed at the same rate that other retail customers pay. For large generations over ten kilowatts, energy will be metered, and if there is excess generation the customer will be compensated as a monetary credit based on the average wholesale power supply rate on the monthly bill. If the customer-generator uses more energy than they generate, the difference will be

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billed at the average wholesale power supply rate. All fixed costs are collected in the facilities charge. For background information, the Natural Resources Committee has had numerous bills and interim study resolutions dealing with customer generation and net metering over the past few years. LB1065 is the first small step in implementing a program towards net metering in the state of Nebraska. On the federal level, Public Utility Regulatory Policies Act, commonly referred to as PURPA, was passed in 1978. The act was meant to promote greater use of renewable energy. It did not mandate net metering. An amendment by the Energy Policy Act of 2005 added a requirement that certain utilities that sell more than 500 million kilowatt hours annually, formally consider net metering and hold a public hearing on the issue. Lincoln Electric has done so. Because it has, it is exempt from the requirements of this bill. Other utilities are also in the process of examining net metering. LB1065 requires the utility to provide the meter for bidirectional measuring of the energy, and the excess generation is paid out in the form of a monthly monetary credit on the utility bill at a rate that is not less than the average wholesale energy cost of the month of generation. Monetary credits carry over month to month through the annual period, and a positive balance is paid out with the final bill of the annual period. A utility may choose to pay more for energy, but they may not pass less than the average wholesale energy cost. The bill also contains permissive language regarding the requirement that the customer-generator has adequate liability insurance. Part of the reason for this requirement is that a rural utility service borrower must require at least \$1 million in liability insurance coverage from any owner of a generation system, including a system that is qualified under PURPA. Utilities that do not, could possibly lose their borrowing status under the federal program. I want to emphasize that under LB1065 individual electric utilities may allow for larger qualified generation systems to be net-metered. The bill does establish standards for qualified systems, ten kilowatts or less, and for qualified systems over ten kilowatts. I would ask the body to advance the bill with the amended committee amendments. Thank you, Mr. President. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Louden. As the Clerk has stated, there are committee amendments offered by the Natural Resources Committee. Senator Louden, as Chairman of that committee, you are recognized to open on AM1991. [LB1065]

SENATOR LOUDEN: Okay. The committee amendments make three technical changes and adds one new section as recommended by Tim Texel, the executive director of the Nebraska Power Review Board. In Section 6, a phrase for clarification was added. That phrase is intended to cover any utility that has begun a process of considering net metering on behalf of its customers. The phrase is, "or has initiated consideration of...utilizing the public process set forth in the federal Public Utility Regulatory Policies Act of 1978, as such act existed on the effective date of this act." A new Section 7 was added that requires a local distribution utility to file an annual report with the Nebraska Power Review Board, indicating "the number of net metering systems within the local

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distribution utility, the rated kilowatt hour capacity of each system, the location of such system, and the type of energy source used by such qualified generation unit." With that, I would ask that that amendment...the committee amendment...okay, yes. Thank you. With that, I would ask that that amendment be advanced. Thank you, Mr. President. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Louden. Mr. Clerk, for a motion. [LB1065]

ASSISTANT CLERK: Mr. President, Senator Louden would offer AM2307 to the committee amendments. (Legislative Journal page 979.) [LB1065]

SENATOR LANGEMEIER: Senator Louden, you are recognized to open on AM2307. [LB1065]

SENATOR LOUDEN: AM2307 makes one change to the committee amendment. It strikes the word "hour" after kilowatt on line 5. The reason for this change is technical. The amendment is talking about capacity, not energy. Kilowatt hour refers to energy and not capacity, and therefore should not have been included in the committee amendment. I would ask the body to adopt this amendment also. Thank you, Mr. President. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Louden. You have heard the opening on LB1065, the committee amendments, and now AM2307. The floor is now open for discussion. Senator Preister, you are recognized. [LB1065]

SENATOR PREISTER: Thank you, Honorable President, friends all. I guess that term may come into question now because probably this amendment and maybe the committee amendment is the only thing in this bill that I think is possibly acceptable. Let me explain why. Senator Louden said this is net metering. This, my friends, is not net metering. True net metering has essentially three requirements. This is across the country, this is what net metering is. It does not require additional insurance. This bill requires additional proof of insurance. True net metering does not require that the customer-generator pay additional charges for equipment or perform or pay for additional tests. This bill requires that, and it's not clearly defined so that we don't know what other costs may actually be shifted to the customer-generator. The third component: A true net metering does not require compliance with additional safety or performance standards. Understand, I said additional. There are federal requirements for safety. There are federal requirements for insurance. All of these things are already required. So to put additional hurdles, additional burdens in front of the customer-generator, is not what net metering is intended to do, and is not what true net metering does. By placing these impediments in the bill and, in addition, by putting a size limitation--a very small size at that--and ten kilowatts, which is the limitation in this

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bill, is about the amount that could supply a house. If you were a farmer, it probably wouldn't cover more than your house. It certainly wouldn't cover all of your outbuildings and just what you would generate yourself. It certainly wouldn't cover any operations of any irrigation systems or anything else. You would not have enough generation from that small a size to really be worth your investment. So when we talk about net metering, I don't want you to be confused and think this is what other states have passed, and this is true net metering, because this is the opposite of net metering. This is more of an industry bill. If you want to pass an industry bill, if you want to prevent development of renewable energy, this is the bill that you want to do. I have been the one that Senator Louden talked about who's been introducing bills and interim studies and working on this issue for the past ten years. The utilities have resisted doing net metering. They have resisted many of those renewable energy bills that I have introduced over the years. I understand they're taking a different position, but to have the industry...and it's not all of the utilities, and this is mainly the rural electric's version. This is not necessarily what OPPD is doing or NPPD is doing, or LES for that matter. Those utilities already have net metering contracts that they have negotiated. The rural electrics, any of the electrics right now can do everything that they want in those negotiated contracts. There is no authority granted in this bill that they don't already have. [LB1065]

SENATOR LANGEMEIER: One minute. [LB1065]

SENATOR PREISTER: The primary purpose of government, we say, is do no harm. This not only would not be net metering, but it would do harm and prevent people from hooking up. This is not the kind of legislation that encourages renewable energy. It discourages renewable energy generation. And in my view I don't call it net metering because it isn't. I call it net burdening because it places additional financial burdens on the farmers and the ranchers, and that's mainly who this is for. And that's who I'm standing up for, the farmers and ranchers, the very few who would be willing to invest their own money in putting up a renewable generator, be it wind, be it solar, be it anything. The... [LB1065]

SENATOR LANGEMEIER: Time. [LB1065]

SENATOR PREISTER: Thank you. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Preister. Senator Louden, you're recognized. [LB1065]

SENATOR LOUDEN: Is my light the only one on? [LB1065]

SENATOR LANGEMEIER: No, it is not. [LB1065]

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SENATOR LOUDEN: Okay. Thank you, Mr. President. As Senator Preister has mentioned, he doesn't call it net metering, but what he calls net metering is something that's going to have your local distribution systems pick up quite a few of the tabs. You want to remember that we have public power in Nebraska. That's what all of us pay. That's the reason Nebraska has such cheap rates is because we do protect that. If we go into something where you're going to net meter that, you get dollar-for-dollar, kilowatt-for-kilowatt, what you do. Or you can generate power during the wintertime when there's a lot of wind, and then use that power later on when electricity is higher priced. Then you will have something that will ultimately cost your distribution system a lot more money. This has been a bill that has been brought forward. It has the safety provisions in it that's the same as what the federal people have. The insurance has to be in there. If you don't have that insurance then there will be some of these rural distribution systems that get their money through that; as we call it, RUS is rural utility service, is where they borrow their lower rate of interest money to operate on. If you don't have a million dollars' worth of insurance, you don't get to borrow the money from them. It's as simple as that. So that has to be in there, so there should be no problem with that. As far as the costs, the cost of the meter is...in the bill says that the distribution system will furnish the meter. Any excess costs...if you're going to do that, sure, you're going to have to pay the excess cost. If I want to build a line to an irrigation well out in the country, or if I want to build a line to another house or something, I have to pay for that line. I did that. We put in a house there on the ranch a couple of miles away. I bought the line. Bought it, paid for it, and gave it to them. So there's no problem with that cost. This is something that's done in the industry all the time. It's something that probably someone that's getting power out of downtown Omaha or something probably doesn't have to deal with. But this has been set up so that it will work. It is a good bill. This is the first step in getting some net metering. They can be done on...people want to do it under the ten kilowatts, then it is mandated that they have to...it has to be done. Anything over that then they, by the governing body of the distribution system, can go ahead and have...have...generate more power. And I think it goes clear on up to 80 kilowatts or something. Then when you start getting into that, that size, then that's where the Power Review Board comes in. But this is something that...it's a good bill, it's been well-thought-out, and this is something that will work. And with that, I would ask that the amendments be passed and the bill be advanced. Thank you, Mr. President. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Preister, you're recognized, followed by Senator Lathrop. [LB1065]

SENATOR PREISTER: Thank you, Honorable President. If I could ask Senator Carlson a question, please. [LB1065]

SENATOR LANGEMEIER: Senator Carlson, would you yield? [LB1065]

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SENATOR CARLSON: Yes, I will. [LB1065]

SENATOR PREISTER: Senator Carlson, you're sitting there looking so intent and so innocent, so you were an easy target to ask a question of. Senator Carlson, you introduced LB609, correct? [LB1065 LB609]

SENATOR CARLSON: Yes. [LB1065]

SENATOR PREISTER: And the purpose of LB609, could you briefly explain that? [LB1065 LB609]

SENATOR CARLSON: The purpose was to encourage communities in rural Nebraska to develop and implement a recruiting program to encourage people from outside of the state of Nebraska to move to rural Nebraska from a population of people that bring their own jobs with them. [LB1065]

SENATOR PREISTER: Okay, thank you, Senator. And then I would say, if in your bill somebody offered an amendment to it to require those people that move here to hire or to pay additional moving costs, would you think that would be a good amendment? [LB1065]

SENATOR CARLSON: Probably not, but I'm not catching the real connection here, Senator Preister, with... [LB1065]

SENATOR PREISTER: I'll get to it. [LB1065]

SENATOR CARLSON: ...this bill. [LB1065]

SENATOR PREISTER: The other thing, if we required them to have additional insurance, would that be a good addition or a positive incentive? [LB1065]

SENATOR CARLSON: Probably not. [LB1065]

SENATOR PREISTER: I think you're getting my point. If we put too many impediments in front of the incentive bill, and net meter...and thank you, Senator Carlson. I won't ask you any further questions. If we put too many impediments in front of people beyond what is already required by PURPA, beyond federal requirements, then people aren't going to take advantage of it. I fully understand and appreciate the rural electrics that Senator Louden is advocating for. I fully appreciate that they have a lot of uncertainty with this and they don't really want to do it, and that within their own ranks there is not agreement and this is understandable. They are not agreeing because it's new. They want to lock in way more insurances than are necessary. But that's not what net metering is. In the bill it talks about encouraging renewable energy development. And

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yet we're requiring additional insurance coverage. We're requiring additional interconnection hookups, and we don't know all of what may be required. We're adding additional financial burdens, which means this is not net metering. This is rural electric utility protection legislation. I accept that if that's what they want to do. But let's not couch it in the name of supporting renewable energy, encouraging renewable energy development, and then put the impediments in the way that is going to prevent that from happening. And how do we know it's going to prevent it from happening? Because these are exactly the things that have been done in other states where they have not had renewable energy development by having these kinds of requirements--redundant requirements, additional burdensome requirements, beyond safety requirements, beyond normal requirements. And while I'm on safety, in the 21 years that these programs have been operating all across the United States, 21 years since PURPA has been in force, not one single accident has happened. And that's in... [LB1065]

SENATOR LANGEMEIER: One minute. [LB1065]

SENATOR PREISTER: ...the states where these additional requirements aren't in place. So again we're talking about redundancy. We're not talking net metering in this bill. If we want net metering then we need to make a lot of changes in this bill. I'm prepared to stay here all morning and work on those changes. I've got some amendments on it. I've got others that I'm ready to turn in that are drafted and others to be drafted if we need to do that. But this is not good public policy. All of the things in this bill can be done right now. Everything, the utilities can do individually right now. This is not granting new authority, but it's reducing and creating more hurdles, more difficulties for the individual farmer/rancher. I'm looking out for that individual farmer/rancher, as well as the safety of the system. [LB1065]

SENATOR LANGEMEIER: Time. [LB1065]

SENATOR PREISTER: Thank you. [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Preister. (Doctor of the day and visitor introduced.) Returning to discussion on AM2307, those wishing to speak, we have Senator Lathrop and Senator Preister. Senator Lathrop, you're recognized. [LB1065]

SENATOR LATHROP: Thank you very much, Mr. President, colleagues. I would like to visit with Senator Loudon, if he'd yield to a few questions. [LB1065]

SENATOR LOUDEN: Yes, I would. [LB1065]

SENATOR LATHROP: All right. Senator Loudon, if I can maybe, because I'm just a city guy, start with a little understanding about what we're trying to accomplish with the bill and understand what this net metering is about. What we're talking about is, primarily in

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the rural areas if someone wants to have a turbine or some kind of a solar energy-generating equipment that they hook up to the main line and they can actually, essentially, sell back electricity to the rural electric outlet? [LB1065]

SENATOR LOUDEN: That's partially correct, but it doesn't have to be just in rural areas. There can be solar power in town. And if you want to have a big enough solar panel and was generating more than what you could use, yes, it would go back out on the line, and you would be paid at the wholesale cost that that power company you were buying power from would pay you. They would take their cost of operation out of there, which they still got to furnish the lines to your establishment or your house or whatever...wherever you have this generation facility. But you would get paid for the extra generation you would do, yes. [LB1065]

SENATOR LATHROP: Okay. And so if I'm out on the farm...let's use the rural example, since this sounds more like a rural electric issue than it is a big city issue. Would that be fair? [LB1065]

SENATOR LOUDEN: No, I don't necessarily because here in towns you have some of these small manufacturing that have generation capacity that they use themselves. It doesn't...this isn't just a rural deal. This can be used any place. And the difference between what Senator Preister calls net metering, he expects to run the meter backwards, and you would get paid at the same price that you pay for your power. Well, when you do that, somebody has to pay the cost of operation. And when you do that, then you take that cost out of there. That's the difference between what Senator Preister wants to do and what I want to do. As he says, I'm protecting the line companies. Yes, I am protecting their costs. They have to operate, they have to live. [LB1065]

SENATOR LATHROP: Okay. And I'm just trying to get a little basic understanding. So let me...let me...the lines are already hooked up to my plant, to my farm, to my house, wherever I'm going to generate the electricity from. And I purchase or go out onto the market and I buy a wind turbine, bring it out to my place of business, whether that's a farm or a plant in town, and then I hook it up to the power, the transmission lines. Is that how this works? [LB1065]

SENATOR LOUDEN: That's how it works. You'd probably hook it up on...somewhere where your meter is. You'd have to run it back through your meter that figures out your power to your establishment. [LB1065]

SENATOR LATHROP: Okay. And in town, I don't know what it looks like out in the rural areas, but there's a glass thing that's stuck on the side of my house and it has a... [LB1065]

SENATOR LOUDEN: Yeah, that's your meter. [LB1065]

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SENATOR LATHROP: ...a disk that moves around and some dials that keep track of it. [LB1065]

SENATOR LOUDEN: Yeah, yeah, that...that's the one that gets to your pocketbook, that's the meter. [LB1065]

SENATOR LATHROP: Okay. And so what we're going to do is hook this turbine up so that the meter can go backwards and forwards. [LB1065]

SENATOR LOUDEN: Right. [LB1065]

SENATOR LATHROP: And, of course, there is some issue about what the rate of compensation should be to the consumer who's generating their own electricity. [LB1065]

SENATOR LOUDEN: Yes. Then he would...then the meter wouldn't turn if he was generating enough for his own consumption. The meter would stand still... [LB1065]

SENATOR LATHROP: Okay. [LB1065]

SENATOR LOUDEN: ...if he... [LB1065]

SENATOR LATHROP: I think I understand the idea of net metering. Now I want to talk to you about how this...how this...if I have the idea to put one of these in my backyard, assuming that my neighbors don't stop me, if I could... [LB1065]

SENATOR LOUDEN: Oh, you could put a solar panel up on your house. I mean, yeah, it's happening in towns. [LB1065]

SENATOR LATHROP: Okay. If I do that then I can't just put this up and hook the wires up with an electrician. I have to have somebody come out and take a look at the whole project to make sure I've done it correctly. Am I right? [LB1065]

SENATOR LOUDEN: Right. There's rules you have to go through, because, see, if you're generating power, and the distribution company has to work on those lines and they want to shut that power off, there has to be a way to shut your system off, otherwise you'll be running power back through the meter, back through your transformer, and you'd be stepping it back up to 7,200 volts on the main line. That's the safety factor that's built...that's in there. And that has to be with PURPA or any of them. That doesn't have anything...everything, everyone has to do that. [LB1065]

SENATOR LATHROP: Okay, I'm going to try to ask these questions without learning

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what a volt and an amp and a kilowatt is, because I...I've never understood that. What I do...what I am interested in though is, is there standards for hooking my power generating unit up to OPPD's? [LB1065]

SENATOR LOUDEN: Yes, there's...I think it's in the bill there. There's some... [LB1065]

SENATOR LANGEMEIER: Time. [LB1065]

SENATOR LOUDEN: ...something, it mentions it in the... [LB1065]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Preister, you're recognized. [LB1065]

SENATOR PREISTER: Thank you, Mr. President. Senator Burling is here. If I could get Senator Burling to yield to a question? [LB1065]

SENATOR LANGEMEIER: Senator Burling, would you yield? [LB1065]

SENATOR BURLING: Yes. [LB1065]

SENATOR PREISTER: Thank you, Senator Burling. Senator Burling, you introduced LB888, is that correct? [LB1065 LB888]

SENATOR BURLING: Yes. [LB1065]

SENATOR PREISTER: And could you briefly explain what the purpose of LB888 is? [LB1065 LB888]

SENATOR BURLING: Well, LB888 went back to change the threshold for corporate income tax between the low rate and the high rate. It's been the same for 30 years, and it needed to be updated. [LB1065 LB888]

SENATOR PREISTER: Essentially, you wanted to provide some fairness and to help business and to encourage them to be in Nebraska, particularly smaller business? [LB1065]

SENATOR BURLING: Yes. That was the other component of it. There's a lot of corporations that are small that don't qualify for business tax incentives and so on and so forth. And this was an effort to show them that we appreciate them and we're going to try and do something for the small corporations also. [LB1065]

SENATOR PREISTER: Yes. And I would agree with those purposes and I serve on the Revenue Committee and I did vote that bill out of committee, and also do support the

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bill on the floor. But, Senator, if we were to take those small businesses and instead of giving them a different tax bracket, what if we were to put them in another bracket and charge them more taxes rather than less? Would that be an incentive or a disincentive for them? [LB1065]

SENATOR BURLING: Well, I think history shows that money in the hands of corporate businesses tends to expand our tax base through additional investments that they can make just because of the money they have at their disposal. [LB1065]

SENATOR PREISTER: Thank you, Senator. My point in this discussion is when we provide tax incentives, when we want to incent something, we give something to the people that we want to attract to the small towns, as in Senator Carlson's bill, to the small business, as in Senator Burling's bill. But if we were to put more burdens in front of those folks, they're not going to come. It's not an incentive, it's a disincentive. That's what I'm trying to deal with here. I don't want to provide additional burdens to these small farmers and ranchers, the very few of which may want to put up renewable energy generators. I understand the need for safety and safety equipment. PURPA provides for that, that's taken care of. It does not need to be in the bill. Insurance, the same way. PURPA provides that the utilities can establish that. It does not have to be put in statute and again additional insurance added to those folks. If we're going to provide incentives, and if you look and read the bill it specifically says this is to provide incentives to encourage renewable energy generation--encourage renewable energy generation. But yet when you look at what it does, it has the opposite effect. It does not encourage renewable energy generation, it discourages it. And we have seen in the states where this has been done and where these additional requirements have been put in place, in those states people have not built or invested in the renewable energy generators. You couple... [LB1065]

SENATOR SCHIMEK PRESIDING [LB1065]

SENATOR SCHIMEK: One minute. [LB1065]

SENATOR PREISTER: ...couple that with the size limitation of only the ten kilowatts, which will essentially do one house, an individual generator is not going to invest that kind of money in something that isn't even going to supply all of his own needs. It just isn't economically viable. They're not going to do it. Then you put all these additional charges on top of it and you are not going to get investment. You are not going to get any kind of incentive. It's disincentive. It is net burdening. And I will be repeating these things because all of the members of the body are not always able to be here and hear each of the things that I have to say. So I will be repeating some. I will be talking also about the... [LB1065]

SENATOR SCHIMEK: Time. [LB1065]

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SENATOR PREISTER: Thank you. [LB1065]

SENATOR SCHIMEK: Thank you, Senator Preister. Just a general reminder, that was your third time. Members, if you could kind of keep your conversations down a little bit, to at least a low roar. I'd like to recognize Senator Lathrop as the next speaker. [LB1065]

SENATOR LATHROP: Very good. And thank you, Madam President. I'd like to continue my discussion with Senator Louden, if he'd yield to a few more questions. [LB1065]

SENATOR SCHIMEK: Senator Louden, would you yield to a few questions from Senator Lathrop? [LB1065]

SENATOR LOUDEN: Yes, I would. [LB1065]

SENATOR LATHROP: Thank you, Senator. And I'd like to go back to the conversation we were having about the standards for hooking up, as a customer, my energy generating device, whether it's solar or wind, to the transmission lines, in my case owned by OPPD, if I could. You told me that there are standards. I assume that you're referring to the standards that are referenced in your bill, is that right? [LB1065]

SENATOR LOUDEN: Yeah, that's...there's some, what do you call it, rules and regulations on how to hook it up, just like any other wiring in your house or anything else. It's all set up under rules and regulations. [LB1065]

SENATOR LATHROP: So if I buy a wind turbine and put it in my backyard, I bring an electrician out, he's going to know what has to be done in order to hook that up properly? [LB1065]

SENATOR LOUDEN: Yes, or he...I would hope so, anyway. Yeah, because they wouldn't...wouldn't allow it to be generated unless...unless it was hooked up properly. [LB1065]

SENATOR LATHROP: Okay. The that govern, in addition to having some standards for how that device is hooked up to the transmission lines, do we also have an inspection that follows that by the power plant? [LB1065]

SENATOR LOUDEN: Yes. The distribution system would have an inspector come out, yeah, until...no difference than if you have your house wired up you can't turn the power on until you have somebody come and inspect it. [LB1065]

SENATOR LATHROP: And that's...that's a terrific analogy. So if I put a wind turbine in

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the backyard, and I now want to...I now want to net meter, I...my electrician has to follow the rules, and then the person...the utility is going to come out and inspect the whole thing and make sure the electrician hooked it up correctly. Is that right? [LB1065]

SENATOR LOUDEN: Yeah, that would be correct, yes. [LB1065]

SENATOR LATHROP: Okay. In your...in your representation to us, this piece that you passed out here, you can see me holding it up? [LB1065]

SENATOR LOUDEN: Yeah. [LB1065]

SENATOR LATHROP: It says liability insurance requirement, and it says there are four points. And the first one is LB1065 does not require liability insurance; and the third point is the rural utility service borrowers are required to have any customers with any form of generation interconnected to the distribution system hold a \$1 million liability insurance policy. That seems like you're saying two different things. [LB1065]

SENATOR LOUDEN: Well, I... [LB1065]

SENATOR LATHROP: Is there a requirement for insurance, or is there not a requirement that somebody be insured that's engaged in this enterprise? [LB1065]

SENATOR LOUDEN: Yes, there's a requirement for insurance if they're going to...if you're on a utility that's a RUS borrower they have to have \$1 million. Now whether...whether they...the RUS borrower has it or...and whoever generates on there also has to have that amount. Now if they're not a RUS borrower they don't necessarily have that much...have to have that much of a liability insurance. [LB1065]

SENATOR LATHROP: Well, in Section 3, paragraph 7, you have an immunity in there that we'll talk about when my amendment comes up. But the last sentence says, the local distribution utility may require proof of liability coverage. And my question is, do they...does the person who hooks up to the grid have to have insurance, or do they not have to have insurance? [LB1065]

SENATOR LOUDEN: They have to have insurance, as it says they may be required to have insurance. And if the utility requires it, that would be up to the local distribution system to decide whether or not it has to be required. This is something that puts some permissive language in here so that it isn't quite so, what would you say, onerous, I guess, for someone to hook up. [LB1065]

SENATOR SCHIMEK: One minute. [LB1065]

SENATOR LATHROP: Is there a requirement for insurance somewhere other than in

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this bill? [LB1065]

SENATOR LOUDEN: No, I don't think so, no. [LB1065]

SENATOR LATHROP: Well, I'm...that leads me to some confusion because one point you say they're not required to have insurance, and then at another point in this summary you say, the rural utility service borrowers are required to have \$1 million liability coverage. Where's that requirement at? [LB1065]

SENATOR LOUDEN: It's the loan requirement. If they're...if they...where it says where they have to have...if they're going to have a loan, they have to have that \$1 million of insurance. [LB1065]

SENATOR LATHROP: Okay. What risk are they insuring? [LB1065]

SENATOR LOUDEN: I suppose bodily harm or damage, if they're generating power and the lines come down or something like that, or they get a line down and they keep on generating power and some... [LB1065]

SENATOR SCHIMEK: Time. Thank you, Senators Lathrop and Louden. Senator Kruse, you're next in line to speak. [LB1065]

SENATOR KRUSE: Thank you, Madam Chair and colleagues. I find the provisions of this bill troubling. We need to proceed with net metering, which we have provided for in some ways, and especially this one has a limit that seems to me totally unworkable when it won't even take care of a farmstead. So I urge that we really consider the implications of a bill that's not helping us further. Madam President, I yield the rest of my time to Senator Preister. [LB1065]

SENATOR SCHIMEK: Senator Preister, Senator Kruse has given you the rest of his time. You have 4 minutes and 15 seconds. [LB1065]

SENATOR PREISTER: Thank you, Mr. President. Thank you, Senator Kruse. I do appreciate your interest and your help with this. Since I've used my three times on this particular amendment and I have other times that I would like to use, I do intend to take as much time as needed. We have only two more hours, so I will have enough amendments to fill that time, and then we will be going to another agenda this afternoon. But I'm not just filling time. I'm hoping to educate those who are interested in understanding what net metering is. In this bill there isn't a specific requirement for insurance. Now, PURPA allows the utilities and the customer-generators to establish their own contracts now. That can be done currently by the rural electrics, by NPPD, by OPPD, and by LES, and they've all got some contracts that they've established with customer-generators. So they're doing this now. This legislation doesn't grant any

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additional authority that they don't already have. It does no expansion, does nothing. In fact, it limits it. It limits it to a size of only ten kilowatts, which again is very small. The insurance provision that I was starting to talk about deals with additional requirements. Let me read to you the states that don't have these requirements. California--and California, I realize, is a different market, but still...Colorado is another state. Colorado does not require additional insurance. The District of Columbia. Georgia, a rural state, another one more comparable perhaps to Nebraska. Our neighbor, Iowa, right next door does not require that. Maryland. Massachusetts. Another rural state like ours, Missouri does not have a requirement for additional insurance. New Hampshire, New Jersey, New York, Oregon, Utah, Vermont, Virginia, Washington, Wyoming--all of these states from one coast to the other have net metering bills. They have not created a bill that's called net metering and then does the opposite. I'm simply wanting you to understand these states have all done it. These states have not had problems. It's been in effect for years. We have had no accidents--not one anywhere related to customer-generators. Why would we want to place additional disincentives before these customer-generators when they're not necessary? If it can be done... [LB1065]

SENATOR SCHIMEK: One minute. [LB1065]

SENATOR PREISTER: ...in these other states without the additional insurance requirements, without the additional equipment requirements, then I think we can do it in Nebraska. We do have a unique system. It is all public power, and I have been a champion and a longtime supporter of public power. In this case I understand their protectionist attitude, but the bill should really have been a utility protection bill rather than calling it a net metering bill that's going to incent renewable energy, because it is not net metering and it is not an incentive. Thank you very much, Ms. President, and thank you, Senator Kruse. [LB1065]

SENATOR SCHIMEK: Thank you, Senator Preister. Mr. Clerk, did you have a motion? [LB1065]

ASSISTANT CLERK: Madam President, Senator Louden would ask unanimous consent to bracket LB1065 until April 5, 2008. [LB1065]

SENATOR SCHIMEK: Is there any objection? Seeing none, it is withdrawn or it is bracketed. Mr. Clerk, items for the record. [LB1065]

ASSISTANT CLERK: Madam President, a new A bill, LB736A offered by Senator Fulton. (Read LB736A by title for the first time.) An amendment to be printed to LB988 from Senator Friend; an amendment to LB1065 from Senator Lathrop; an amendment to LB1065 from Senator Preister. (Legislative Journal pages 1085-1090.) [LB736A LB988 LB1065]

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Madam President, the next bill on General File is LB916, which was introduced by the Revenue Committee. (Read title.) The bill was read for the first time on January 14 of this year, referred to the Revenue Committee which reports the bill to General File with committee amendments attached. (AM1932, Legislative Journal page 681.) [LB916]

SENATOR SCHIMEK: Thank you, Mr. Clerk. The Chair recognizes Senator Janssen to open on the Revenue Committee bill, LB916. [LB916]

SENATOR JANSSEN: Thank you, Senator Schimek, members of the Legislature. LB916 would amend several sections of the sales tax statute to enact definitions, clarify definitions, and otherwise aid the Department of Revenue to enforce the sales tax statutes. It would also provide for enforcement of sales tax through the responsible officer or employee that allows the taxpayer and the Tax Commissioner to waive the deadlines for resolving disputes by agreements. It is a combination of two different requests for legislation proposed by the Department of Revenue this year. There are a couple of things we need to make clear from the start of the debate on this bill. First, LB916 does not impose a new tax. Let me repeat: LB916 does not impose a new tax. Electronic products have been subject to the tax in Nebraska at least since the Nebraska Supreme Court decided the case of May Broadcasting v. Boehm in 1992. This case held that the electronic programming was tangible personal property subject to tax. It is true that sales from out-of-state providers of digital downloads have not been collecting sales tax and we have not enforced our sales tax against these providers, therefore, these out-of-state companies that are calling and writing you view this as a new tax because they have not been collecting it before. What has changed is amendments to streamline sales and use tax agreement that were approved in the September meeting. After many years of work, the organizations approved uniform definitions of digital audio works, digital audiovisual works, digital codes, and digital books. These uniform definitions of digital products would be inserted into the Nebraska statutes by LB916. In order to collect our tax on these products, Nebraska must adopt uniform definitions. Legislation similar to LB916 has been introduced in most of the other 17 states that are members of the agreement whether or not the state has previously tried to tax these products. These state legislators must mostly ignore these complaints about new tax and adopt the informing legislation. I suggest that we do the same thing. That is my opening, Senator Schimek. [LB916]

SENATOR SCHIMEK: Thank you, Senator Janssen. You have heard the opening on LB916. There are committee amendments and I recognize you again, Senator Janssen, to open on the committee amendments. [LB916]

SENATOR JANSSEN: Thank you, Senator Schimek. The committee amendments make a couple of changes to clarify the aspects of LB916 and then adds the provisions of LB1137, which clarifies the sales tax exemption for community-based energy development projects that were enacted last year; LB1126, to exempt original and

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copies of depositions and court documents and copies of medical records obtained by a patient; and LB1134, to expand the exemption for livestock to include game birds. A section-by-section of the summary of the bill as amended would be, Section 1 would clarify that the restrictions on ownership prohibits individuals from owning directly or indirectly more than 15 percent of the project. These changes recognizing ownership by partnerships and cooperatives and other pass-through entities. Changes to these sections also clarify that the restrictions require that at least 33 percent of the gross power purchase payments must go to the owners of local or the local communities. Currently, these restrictions do not specify whether the calculation is to be on the growth or the net receipts. LB1137, Section 2 would require that C-BED developers to notify the utilities if there is a change in ownership that would "dequalify" the project from benefits of the act, LB1137. Sections 5 and 6 would add new definition to digital products that we have already discussed on the sales tax statute. These sections also would add two new exemptions into the revenue act and sales tax statutes. Section 7 would amend the definition of gross receipts, or sales tax base, to strike the first six subsections. Pursuant to LB759 in 2003, the first six subsections terminate January 1, 2004, while the next eight became operative on that date. LB916 would delete those obsolete sections from the statutes. This section would also insert satellite TV installation as taxable alongside of cable service. Under current law, installation of utilities including cable is taxable. LB916 would clarify the statute by adding satellite TV also. You may have heard from some satellite installers about this provision, and some clarification may be possible. But I want to make it clear at this point that installation labor has been taxable for at least six years in this state, and LB916 does not change that outcome. Finally, this section would provide that all retail sales of digital goods delivered electronically is taxable if the state would be taxable had the product been delivered on a tangible medium like a CD or a video disc. This is consistent with case law in Nebraska but not generally practiced. Section 9 would define the delivered electronically as a means other than delivery of tangible storage media. Section 10 would define digital audio works as the sound, including ring tones. Section 11 would define digital audiovisual works as pictures and sound. And Section 12 would define digital books as something which would be recognized as a book. Section 13 would define digital code or code-granting, the purchaser a right to access products delivered electronically. Repeating again, sales on all of these products are taxable under the Nebraska sales tax law as interpreted by the Supreme Court. LB916 states this in the statute. Section 14 would amend 77-2701.34, the definition of sale for resale to specifically include digital products within the exclusion of sales for resale. Section 17 would amend Section 77-2704.09 to rewrite the sales tax exemption for insulin, prescription drugs, and prosthetic devices. Under LB916 there would be three categories of exemption: insulin in all cases; drugs when dispensed pursuant to a prescription; and durable medical equipment, all medical supplies and prostheses when sold under a prescription and eligible for reimbursement under Medical Assistance Act. Currently, there is some ambiguities resolved by the regulation of the department as to whether or not prescription drugs must also be reimbursable under Medicaid. Section 20 would amend

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Section 77-2704.46 to add species of game birds subject to permit and regulation of the Game and Parks Commission to the state sales exemption for animal life. Section 21 would amend 77-2704.57 to require the C-BED developer to show the Tax Commissioner the ownership structure of the power purchase agreement to assure qualification. Also the Tax Commissioner is to notify the utility if there is a change in ownership that would disqualify the project. If an electronic utility purchases a project, the sales tax exemption would be extinguished but there would be no recovery of past benefits that were received. This section also adds the definition of power purchase agreement payments as the total payment during the life of the agreement payments to the local communities are to include payment for real and personal property tax leases, the real and personal property tax receipt. The Department of Revenue may examine the receipts and other records to determine if the projected payment agreements were met. If not, the department may recover all of the sales tax that was not paid until three years after the end of the power purchase agreement. Also the project may voluntarily surrender the sales tax exemption and pay the amount of sale and use tax that would have been due. Interest shall be paid on recovery sales at the statutory rate. Section 22 would enact a new sales tax exemption for original and copies of depositions, bills of exception, and transcripts prepared by a court reporter. And that was LB1126 with clarifying amendment. Section 23 would enact a new sales tax exemption for copies of medical records provided to the patient or other persons holding the patient's power of attorney for healthcare. Section 24 would amend Section 77-2705 to require retailers to register the names and addresses of employees, officers, directors, shareholders, members, or any other person who would be responsible for collecting and remitting that sales tax. These persons' actions are then attributed to business for the purpose of audit or misrepresentation. Such persons may also be personally liable for unpaid taxes of the business. Section 25 would amend Section 77-2708, the sales tax enforcement, to allow the Tax Commissioner and any taxpayer seeking a refund to agree to waive the 180-day deadline for resolving disputes. A request for a hearing on the refund claim would be automatically considered a waiver of a 180-day period. Under current law, if the Tax Commissioner... [LB916 LB1137 LB1126 LB1134]

SENATOR SCHIMEK: One minute. [LB916]

SENATOR JANSSEN: ...does not rule within 180 days, the claim is deemed to be allowed. LB916 would provide for a waiver under these conditions. That was in the original LB916. Section 26 would provide an operative date of October 1, 2008, and Section 27 would repeal the original sections. LB916 with uniform operative dates for all of the sections. Thank you. [LB916]

SENATOR SCHIMEK: Thank you, Senator Janssen. (Visitors introduced.) Mr. Clerk, is there an amendment to the committee amendment? [LB916]

ASSISTANT CLERK: Madam President, Senator Janssen would offer AM2241 to the

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committee amendments. (Legislative Journal page 862.) [LB916]

SENATOR SCHIMEK: Senator Janssen, to open on your amendment to the committee amendment. [LB916]

SENATOR JANSSEN: Thank you, Senator Schimek. AM2241 clarifies a few provisions of the committee's version of the bill, as requested by the Department of Revenue. These amendments were agreed to by the department and the interested parties. The amendment strikes "include" from a listing of digital products included in the definition of gross receipts. In other words, instead of digital products including digital audio works, digital audiovisual works, digital codes, and digital books, digital products would mean only those five things. Such products would be taxable only if the physical product would be taxable. The amendment would clarify that sales for resale exclusions for digital products applies where the sale is to the place where admission is charged and admission is subject to that sales tax. A typical example would be a movie theater. They don't have to pay sales tax on digital products that they buy for resale to the public. The amendments clarify the division of new wind energy projects as tangible personal property incorporated into the manufacture, installation, instruction, repair or replacement of a wind charger, turbine, and so on and so forth, used to make electricity. Fourth thing it does, the amendment would clarify that the documents prepared by a court reporter--that was in LB1126--would be exempt from sales tax only if prepared and sold by the court reporter. That is the extent of this amendment. Thank you. [LB916 LB1126]

SENATOR SCHIMEK: Thank you, Senator Janssen. You've now heard the opening on AM2241 to AM1932. Is there discussion on the amendment? Seeing none, Senator Janssen to close. Senator Janssen waives closing. The question is the adoption of AM2241 to the committee amendment. All in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB916]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of Senator Janssen's amendment to the committee amendments. [LB916]

SENATOR SCHIMEK: The amendment is adopted. Mr. Clerk. [LB916]

ASSISTANT CLERK: Madam President, I have nothing further pending to the committee amendments. [LB916]

SENATOR SCHIMEK: All right. We are back to the committee amendment then. Any discussion on the committee amendment? Senator Janssen to close on the committee amendment. Senator Janssen waives closing. The question is the adoption of AM1932 to the bill, LB916. All in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB916]

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ASSISTANT CLERK: 28 ayes, 0 nays on adoption of committee amendments. [LB916]

SENATOR SCHIMEK: The committee amendment is adopted. Are there further amendments, Mr. Clerk? [LB916]

ASSISTANT CLERK: Senator Cornett would offer AM2515 to LB916. (Legislative Journal page 1090.) [LB916]

SENATOR SCHIMEK: Thank you. Senator Cornett to open on AM2515. [LB916]

SENATOR CORNETT: Thank you, Madam President and members of the body. AM2515 would resolve an issue regarding installation labor. Myself and legal counsel for Revenue Committee, the Tax Commissioner Doug Ewald, and the telecommunications industry have been working for a number of weeks on a resolution. AM2515 addresses most of the concerns of the Tax Commissioner and the telecommunications industry. I would urge the body's support of AM2515. Thank you very much. [LB916]

SENATOR SCHIMEK: Thank you, Senator Cornett. You've heard the opening on AM2515. Is there discussion on the amendment? Seeing none...I'm sorry, Senator Janssen, your light is on. [LB916]

SENATOR JANSSEN: Thank you, Senator Schimek, members of the Legislature. This is a compromise that has been worked out and I do support Senator Cornett's amendment. Thank you. [LB916]

SENATOR SCHIMEK: Thank you, Senator Janssen. Are there any others who wish to speak on the Cornett amendment? Seeing none, Senator Cornett waives closing. The question is then the adoption of AM2515 to LB916. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB916]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of Senator Cornett's amendment. [LB916]

SENATOR SCHIMEK: The amendment is adopted. We are back to discussion of the Revenue Committee bill, LB916. Seeing no lights, Senator Janssen waives closing on the bill. The question is the advancement of LB916 to E&R Initial. All in favor signify by voting aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB916]

ASSISTANT CLERK: 33 ayes, 0 nays on the motion to advance the bill, Madam President. [LB916]

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SENATOR SCHIMEK: The bill is advanced. Mr. Clerk, next item. [LB916]

ASSISTANT CLERK: Next bill is LB965, offered by the Revenue Committee. (Read title.) The bill was read for the first time on January 15, referred to the Revenue Committee. That committee reports the bill to General File with committee amendments. (AM1750, Legislative Journal page 486.) [LB965]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Janssen, as Chair of the Revenue Committee, you are recognized to open. [LB965]

SENATOR JANSSEN: Thank you, Senator Schimek, members of the Legislature. LB965 was introduced to amend a number of property tax statutes to enhance the administration and enforcement of the property taxes by the Department of Revenue. First, it would eliminate the requirement that form 521 be produced in quadruplicate. This form reports the sales price of real property. Instead, the department would have electronic forms used that wouldn't require the multiple paper copies. Second, the personal property tax statutes would be clarified by inserting consistent terminology of taxable tangible personal property. It would also provide a uniform three-year statute of limitations to correct the personal property tax returns and clarify the refund procedures. Under the bill, the county board shall grant refunds caused by a clerical error or honest mistake or misunderstanding. The current statutes say "may." This says "shall." The claim must be filed within three years. The assessor or treasurer is to verify the validity. If the refund is due to an order from the TERC or a court, the refund is automatic and need not be approved by the county board. That is the extent of the opening on LB965. [LB965]

SENATOR SCHIMEK: Thank you, Senator Janssen. You've heard the opening on LB965. Mr. Clerk, there is a committee amendment, correct? [LB965]

ASSISTANT CLERK: There are committee amendments from the Revenue Committee. [LB965]

SENATOR SCHIMEK: Yes, thank you. Senator Janssen to open on the committee amendment. [LB965]

SENATOR JANSSEN: Thank you, Senator Schimek, members. The committee amendments, AM1750, would make three changes to the bill. First, it would add "taxable" before "tangible personal property." Second, it would provide specifically that the refunds due to a change in the federal income tax form would be handled through the county board the same as the clerical errors and honest mistakes. Third, it would add the entire provision of LB964 to the bill. LB964 proposes the following changes. First, if a greenbelt applicant fails to protest the denial of special values because of a

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failure to receive the required notice of the denial, the TERC may consider the protest and may determine special value for that year or the recaptured value. Second, parties may limit the official record of an appeal of an equalization order to the material dealing with the appealing county. Third, the amendment would specifically exclude the TERC and its employees from personal code exemptions for vacations, sick leave, and retirement. The bill was introduced by the Revenue Committee earlier this year. That is the extent of the committee amendments, Madam Chairman. [LB965 LB964]

SENATOR SCHIMEK: Thank you, Senator Janssen. Is there discussion on the committee amendment? Any discussion? Seeing none, Senator Janssen waives closing on the committee amendment. So the question is, shall we adopt the committee amendment, AM1750? All in favor vote aye; all opposed vote nay. Have you all voted that wish to vote? Record, Mr. Clerk. [LB965]

ASSISTANT CLERK: 28 ayes, 0 nays on the adoption of committee amendments. [LB965]

SENATOR SCHIMEK: Committee amendments are adopted. We are back to the bill. There are further amendments. Mr. Clerk. [LB965]

ASSISTANT CLERK: Senator Raikes would offer AM2511. (Legislative Journal pages 1091-1093.) [LB965]

SENATOR SCHIMEK: Senator Raikes, you're recognized to open on AM2511. [LB965]

SENATOR RAIKES: Thank you, Madam President, members of the Legislature. AM2511 amends into LB965 the provisions of LB814, as amended by the Revenue Committee. This amendment would make changes regarding notification and payment of delinquent taxes. Currently, counties are not required to accept partial payment of delinquent property taxes. As a result, situations have arisen in which a taxpayer is willing and able to put money toward his or her delinquent tax obligation, but the county is unwilling to accept such payment because it is not payment in full. This inability to buy down the balance of the delinquent taxes leads to higher amounts of interest, for example, for the taxpayer. This amendment would require counties to accept partial payments of at least \$500 toward the payment of current or delinquent real or personal property taxes. Such payments would reduce the principal amount of delinquent taxes upon which interest would accrue. Counties would continue to be authorized to pass a resolution to accept payments of less than \$500 or to hold payments in escrow. So this would, in effect, be a requirement that a payment of \$500 or more be accepted and it would continue to be the case that counties would be allowed permissive decisions on amounts less than \$500 or escrow payments. The amendment would also require counties to notify taxpayers of delinquency on the first half of real or personal property taxes no later than May 15 in counties with more than 100,000 residents, and June 15

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in all other counties. As it stands now, taxpayers who are delinquent on the first half of real property taxes are not required to receive notice until they receive a statement for the following year's taxes in December. That being the case, a taxpayer in Douglas, Lancaster or Sarpy County would go more than eight months before receiving notice of delinquency, and taxpayers in other counties would go more than seven months. At a statutorily required rate of 14 percent, a substantial amount of interest can accrue. This amendment does nothing to stop the accrual of such interest. It simply requires that taxpayers be notified so that they are aware of the situation. The amendment requires the county treasurer to assign a \$1 fee to the taxpayer to account for the cost of sending this notice. Finally, the amendment also requires an owner of property that becomes subject to sale to satisfy delinquent tax obligations, that is the tax sale certificate process, to be notified prior to such sale at their last known address. Currently, listings of property subject to the tax sale certificate process are published in the newspaper and posted in the office of the county treasurer. I believe it would be a good policy to also attempt to notify the owners of such properties directly as to the possibility of an impending sale. Again, this is LB814, as introduced and advanced out of committee, the Revenue Committee. The vote on the Revenue Committee was 5-0, with 3 absent. So I urge your support of this amendment. Thank you. [LB965 LB814]

SENATOR SCHIMEK: Thank you, Senator Raikes. We now go to speakers on the amendment. Senator Wightman, you are recognized to speak, followed by Senator Janssen, and Stuthman. [LB965]

SENATOR WIGHTMAN: Thank you, Madam President, members of the body. I would like to engage in a little conversation with Senator Raikes, if I might. [LB965]

SENATOR SCHIMEK: Certainly. Senator Raikes, would you yield to a question or two? [LB965]

SENATOR RAIKES: Yes. Yes. [LB965]

SENATOR WIGHTMAN: Senator Raikes, I think I probably support your amendment. I did have some questions about it. As you know, some of these counties rely very heavily upon people who come in and buy up the delinquent taxes because that provides them the revenue and kind of spreads their revenue out equally during the year if they have too many delinquencies. What do you see the effect of that amendment being? Say those taxes have been sold as delinquent taxes to whoever may buy them up. I assume that would be credited against the person who had purchased those delinquent taxes. Would that be your understanding? [LB965]

SENATOR RAIKES: Well, actually, Senator, I think the notification requirement would come into play before the tax sale certificate process had actually been entered, but if that isn't the case then I think you are correct in terms of the implication. [LB965]

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SENATOR WIGHTMAN: Well, once the taxes were bought, the delinquent taxes were bought by whatever entity bought them, there would still be a right of partial payment. Is that correct? [LB965]

SENATOR RAIKES: Yes. Actually, it is a good question. I think you are right. I will pursue that to make sure, but I think that you are right. The requirement to accept at least \$500 would apply to those obligations, as well as obligations that are not subject to the tax sale certificate process. [LB965]

SENATOR WIGHTMAN: So it might limit their obligation to take real small payments if you were the holder of those tax sale certificates, but if it was \$500 or larger there wouldn't be any option on the part of the holder of those certificates, would there? He would be obligated to take the \$500-plus payment. [LB965]

SENATOR RAIKES: That would be my interpretation, Senator, but I'll check that out and try to get back to you on that. [LB965]

SENATOR WIGHTMAN: Thank you, Senator Raikes. Thank you, Madam President. [LB965]

SENATOR SCHIMEK: Thank you, Senators Wightman and Raikes. Senator Janssen, you are next in line to speak. [LB965]

SENATOR JANSSEN: Thank you, Senator Schimek. I do stand in support of AM2511. That was LB814, I believe, and in my opinion, for what that's worth, you know, that they have to make a \$500 payment, that's better than nothing, you know. And they're still allowed to charge interest on the remaining amount that is due. I commend Senator Raikes for bringing this bill, and the committee felt as though it was the right thing to do. It came out of the committee with a good, positive vote, so I do stand in support of the original LB814. Thank you. [LB965 LB814]

SENATOR SCHIMEK: Thank you, Senator Janssen. Senator Stuthman, you're recognized to speak. [LB965]

SENATOR STUTHMAN: Thank you, Madam President, members of the body. I have some concerns about this amendment, and the main concerns...and I think it's probably some of the concerns that Senator Wightman also had, and I would like to ask Senator Raikes a couple questions. [LB965]

SENATOR SCHIMEK: Senator Raikes, would you yield to a question or two? [LB965]

SENATOR RAIKES: Yes. [LB965]

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SENATOR STUTHMAN: Senator Raikes, I'm going to give you an example, having served on the county board, and delinquent taxes, you know, were sold. They've probably been on some property that hasn't paid taxes for several years. The fact that the delinquent taxes were put up for sale, they were sold, they were purchased for a prior year, and the individual finally decides that he wants to pay \$500 down on, as it states in the bill that it would be to the oldest taxes that are due. Now these oldest taxes would have been the ones that have been purchased up by this company that buys the sales tax, the property tax delinquent taxes. How...and the interest stops at the date that it's paid. Give me an example of how the county treasurer is going to handle that, as far as paying the purchaser of those sales tax. [LB965]

SENATOR RAIKES: My understanding is this, Senator, that once the property has gone to the tax sale process, the county has been paid. This is an obligation only on the county, not on the person who bought the tax certificate. This is an obligation only on the county. So this process then, as far as accepting a payment of at least \$500, would be an obligation only on the county and it would only apply to that pre-tax certificate part of the payment period. [LB965]

SENATOR STUTHMAN: But, Senator Raikes, when there's...I'll give you an example. If there's taxes due on a parcel of property of \$5,000, and those \$5,000 have been put up for tax sale and John has purchased these tax certificates, but the individual comes in and pays \$500 down on his oldest taxes that were due, then what is the duty of the treasurer? The treasurer has to notify the company that bought those receipts that \$500 has been paid. Yes, the county has received the \$500, but the \$500 has to be credited to and paid back to that company that bought the sales tax certificate. Am I correct? [LB965]

SENATOR RAIKES: Well again, I...you know, my understanding--and I'll probably need to think through this more clearly based on your experience and that of some others--at the time the certificate is sold, the obligation to the county is met. [LB965]

SENATOR STUTHMAN: That is correct. [LB965]

SENATOR RAIKES: The county has been fully paid, so there's no longer a need for a partial payment on that property as far as the county is concerned. They have been paid. They have been paid by the person who bought the tax certificate. [LB965]

SENATOR STUTHMAN: That is correct. [LB965]

SENATOR RAIKES: So whatever would apply after it's sold on tax certificate wouldn't be any different than it is right now. [LB965]

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SENATOR STUTHMAN: No, that is not the way I understand this because... [LB965]

SENATOR RAIKES: Okay. [LB965]

SENATOR STUTHMAN: ...because this is to the oldest taxes due, and the oldest taxes due are from the property owner to the county. The property owner owes the money to the county, but yet someone has bought that sale, that property tax certificate,... [LB965]

SENATOR SCHIMEK: One minute. [LB965]

SENATOR STUTHMAN: ...and it has to be reimbursed to that individual company that bought those, say, property tax certificates. There's got to be...there's a transaction that's going to have to take place from the county treasurer that they're going to have to see that those \$500 got credited or paid to the company that bought those tax certificates. [LB965]

SENATOR RAIKES: Okay. So we have a few seconds and I'll ask you this. So how is that handled right now? [LB965]

SENATOR STUTHMAN: How is that handled? [LB965]

SENATOR RAIKES: How is that handled right now without the adoption of the \$500 minimum? [LB965]

SENATOR STUTHMAN: How that is handled right now? The individual comes in and pays the full amount of taxes that is due that was sold to this company. Then those dollars are credited or sent to that individual, the company that bought those tax certificates. [LB965]

SENATOR SCHIMEK: Time. [LB965]

SENATOR STUTHMAN: Thank you. [LB965]

SENATOR SCHIMEK: Thank you, Senator Stuthman. Senator Engel, you are next in line to speak. [LB965]

SENATOR ENGEL: Madam President, members of the body, I too have some questions on this amendment which is, well, LB814 I guess it is. The thing is, first of all, I've been getting quite a bit of correspondence from our county treasurers. And I used to serve on the county board in Dakota County, and I think, from what my understanding, and I'll verify this with Senator Raikes, the counties can do this now is the way I understand it. They can accept partial payments now, legally? Senator Raikes, would

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you respond? [LB965 LB814]

SENATOR SCHIMEK: Senator Raikes, would you yield to a question? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR ENGEL: Can...counties can do this now, can't they? Can't they accept partial payments now? [LB965]

SENATOR RAIKES: Yes. It is...they can do it. They are permitted. They are also permitted to accept payments in escrow. [LB965]

SENATOR ENGEL: Okay. So they are permitted to do it now. So as far as I'm concerned, if they can already do it, I think we should let them do it rather than have another state...this is another state mandate and mandates just aren't very popular with me and with most of the people out in county and city government. And I also have a question, too, as far as the cost of this. If they're going to accept...mandated to accept all these partial payments, I believe you're going to have to have more equipment and probably more help. Because someone comes in and pays a partial payment and they got nine or ten properties and they have to split all that up, and then they have to send it to the different entities, the school, the city, etcetera, etcetera, who these taxes are distributed to. I think it's going to cause a lot more book work, a lot more, and therefore, if you're going to have that, you know darn well they'll be asking for more computers, they'll be asking for more help and so forth. I think it's going to raise the cost of everything. So I guess what I'm saying is...well, I'll ask Senator Raikes his opinion on that. Do you think it will? [LB965]

SENATOR RAIKES: Senator, it's a good question. As you mentioned, a lot of them do it now so apparently the cost is bearable or they wouldn't decide on their own to do it now. So that's certainly one answer to that. The question is, how much does it cost with the current? I mean, for example, you send in your payment and it comes one day late to the county office. All right, the county decides--a check for \$5,000 or whatever it is--instead of taking the \$5,000 and sending you a bill for the \$9.62 or whatever it is you owe because of the penalty and the interest, they send you the \$5,000 check back and then they may notify you. It may take them 10 days to get the check back to you and then another 10 days or 20 days before you get it, and so in the meantime the money is not deposited in the county. They haven't been paid. So all I'm suggesting to you, there's a cost to that system as well, and I think there's a cost in terms of good relationships with taxpayers. I don't think there's many businesses that taxpayers deal with, if they go and there is an obligation and they offer to pay part of it, particularly a substantial amount like \$500 or more, and the vendor says, no, if you can't pay me entirely then you just keep your money. So this is...this is...well, I'm going beyond your question so I'll (inaudible). [LB965]

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SENATOR ENGEL: No, I appreciate your full answer to my question. The only thing is, those counties that are doing it now, I don't know how many are doing it or anything, but evidently the ones that are doing it feel that they can afford to do it, but that doesn't mean all counties can afford to do it. So therefore, I think it's...and what we're doing, we're telling every one of them they have to do it. As far as your other situation, as far as the \$5,000 check and it's a day late and they hold on to it and send it back and so forth, I think this could be tweaked in another way for those situations where it's just a couple three days late or a week late or ten days or whatever figure you want to put there, that they can accept that and bill them for whatever the penalty or that little extra amount of interest is. I think that would be much simpler to do than mandate every county to do this. So those are my opinions, and with that,... [LB965]

SENATOR SCHIMEK: One minute. [LB965]

SENATOR ENGEL: ...I return the rest of my time to the Chair. Thank you very much, Madam President. [LB965]

SENATOR SCHIMEK: Thank you, Senator Engel. (Visitors introduced.) Senator Hudkins, you are next in line to speak, followed by Senators Gay, Stuthman, and Preister. [LB965]

SENATOR HUDKINS: Thank you. Thank you, Madam President and members. I would like to ask Senator Raikes a few questions, if I may. [LB965]

SENATOR SCHIMEK: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR HUDKINS: Senator Raikes, my questions are going along the same line as Senator Engel's. Do you know how many counties are accepting partial payments today? [LB965]

SENATOR RAIKES: The total count I don't know, and I don't know...I'm not sure that that count is compiled anywhere. I could check on that, but I'm not sure that it is. [LB965]

SENATOR HUDKINS: Are we talking half of the counties, ten counties, a handful? [LB965]

SENATOR RAIKES: That are on their own deciding to accept partial payments? [LB965]

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SENATOR HUDKINS: Yes. [LB965]

SENATOR RAIKES: I would hesitate to say that many. I know of...or I'm told of two or three but not more than that,... [LB965]

SENATOR HUDKINS: Well, in... [LB965]

SENATOR RAIKES: ...although those two or three are relatively larger ones. [LB965]

SENATOR HUDKINS: And that's where I'm going. In my mind, I think this could be a little more difficult to administer if the counties have to change their programming to do this. And if, as you say, it is the larger counties that is doing that already and it seems to be working for them, let them go ahead and do it, but don't force the counties that can't afford to do this, because there could be significant programming costs to keep track of the balances, the notices and so forth. Oh, that's another thing. When the original tax notice is sent out, it tells you the taxes for the entire year, so you should know when your second half is due. But if they send out a second notice, there is a fee on that. What happens, Senator Raikes, when the taxpayer writes you a check for the taxes due but not that \$1 fee? Is he going to get his check back and then we start all over? [LB965]

SENATOR RAIKES: Actually, under this bill, Senator, that would be at the option of the county. If it was less than \$500, they may well send the check back and you start all over again. And in many counties now, I think that is the process. [LB965]

SENATOR HUDKINS: But it would be a county-by-county decision. Is that correct? [LB965]

SENATOR RAIKES: That's...yes, it is permissive now. They are permitted to accept partial payments or payments in escrow; they're not required to do so. [LB965]

SENATOR HUDKINS: Thank you, Senator Raikes. So I guess my thoughts on this would be, if the counties have the option let them go ahead and do as they wish rather than forcing them to possibly incur significant costs to change the programming. Thank you, Mr. President. [LB965]

SENATOR AGUILAR PRESIDING [LB965]

SENATOR AGUILAR: Thank you, Senator Hudkins and Senator Raikes. Next to speak is Senator Gay. You are recognized. [LB965]

SENATOR GAY: Thank you, Mr. President. I was listening to Senator Raikes as he described this, and I think this goes a ways to improve a situation, but there are

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concerns about the cost to the counties, implementation costs and some of those things. When he had talked about somebody trying to make a payment and not making the whole payment but making a good effort, I think that is something the counties need to work on and try to do everything they can do to help that taxpayer. So that part of this bill I support and I think is a good part of the bill. The other parts of the bill though that concern me are the \$1 or \$2 fee. I was looking at the fiscal statement and there is no fiscal impact to the state of Nebraska. That's fine for our budget. But I do think there might be a little bit of a concern on what the cost is, and maybe we should do some further looking into what some of these counties, those that are doing it, are they doing it in a way that they can make it work? Obviously, or they wouldn't be doing it. Or maybe they are losing money and we could improve this somehow to allow them to charge more or do whatever. But I do think there's a certain duty on behalf of the county treasurers to be...get out there as much as they can to inform the taxpayer that, oh, you have delinquent taxes and we want to get them paid before we go to the tax sales, and some of the things that Senator Stuthman was talking about, so if there was a way maybe to do that. One thing, Senator Raikes, if he would yield to a question... [LB965]

SENATOR AGUILAR: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR GAY: Senator Raikes, you brought this bill and obviously there's some problems out there, in your mind, or you wouldn't have brought the bill to begin with. But do you want to take a little time and explain some of the situations that you encountered or why you think we need to improve this? Because I thought you were on the track there. I agree with you as far as they shouldn't be penalized, but if you want to explain a little further, I'd yield the balance of my time. I just wanted to make those statements to see if there's a way that we could improve it. Other than that, I'd yield the balance of my time to Senator Raikes, as needed. [LB965]

SENATOR RAIKES: Thank you, Senator Gay. I do appreciate the time. My interest here, I did have a constituent that I believe the situation was that he had an entity hired for a fee that was paying the taxes. For somehow they got confused, didn't pay the taxes. So he had delinquent taxes which he didn't know about for several months, and that's the reason for the notification. I had another one who had made a payment; it was a day late. He ended up paying a lot of interest, having the check returned and so on. I guess the only thing I would add: We need to balance our concern about convenience for the counties with our concern for appropriate relationships for the taxpayers. I think it's easy for us to get in the notion that, really, citizens are there for the convenience of the courthouse rather than the other way around. So all I'm suggesting is that we need to do a balance there. If it's an onerous obligation on the part of the county to do something, then that needs to be recognized. But if there's a way it can be done and it more appropriately accommodates taxpayers, then we ought to do that. So that's the

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intent here. I again thank Senator Gay. There is some more work to be done on this, so what I am going to do is withdraw the amendment, make some changes, and reoffer it on Select File. Thank you, Mr. President. [LB965]

SENATOR AGUILAR: Thank you, Senator Raikes and Senator Gay. The amendment is withdrawn. [LB965]

ASSISTANT CLERK: Mr. President, I have nothing further pending to the bill. [LB965]

SENATOR AGUILAR: Senator Raikes. Oh, I'm sorry. Senator Preister, you are recognized. Senator Preister waives. Senator Raikes, you're recognized to close on...I'm sorry, Senator Janssen is recognized to close on LB965. Senator Janssen waives closing. You have heard the closing. All those in favor of advancing LB965 vote aye; those opposed, nay. Have you all voted that care to? Record, Mr. Clerk. [LB965]

ASSISTANT CLERK: 32 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB965]

SENATOR AGUILAR: LB965 is advanced. Items for the record, Mr. Clerk? [LB965]

ASSISTANT CLERK: Thank you, Mr. President. New bill LB1172A, offered by Senator Dierks. (Read LB1172A by title for the first time.) And interim study resolutions: LR286, LR287, LR288, LR289, LR290, and LR291 offered by Senator Louden. (Legislative Journal pages 1094-1096.) [LB1172A LR286 LR287 LR288 LR289 LR290 LR291]

Mr. President, the next bill on General File is LB880, introduced by Senator Kopplin. (Read title.) The bill was read for the first time on January 11 of this year, referred to the Committee on Natural Resources. That committee reports the bill to General File with committee amendments attached. (AM1787, Legislative Journal page 633.) [LB880]

SENATOR AGUILAR: Senator Kopplin, you are recognized to open on LB880. [LB880]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. Today I'm introducing LB880 on behalf of the Papillion Creek Watershed Partnership. LB880 could allow significant environmental and safety factors to happen within the watershed. This is a chance for us to allow a regional approach to water management. The Papillion Creek Watershed is made up of three main tributaries: Little Papillion Creek, Big Papillion Creek, and West Papillion Creek. It covers 402 square miles in three counties: Washington County, Douglas County, Sarpy County. It contains one-third of our state's population. The streams wind their way through our communities and empty into the Missouri River. The Sarpy County cities of Papillion and especially Bellevue lie at the end of this watershed. This is an opportunity for us to allow regional exploration of needs, exploration of solutions. We can pass it and go on with things, or we can let it fail

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and leave things just as they are. The Papillion Creek Watershed Partnership is a collaboration among 11 local jurisdictions to meet mutual water quality and flood prevention needs. Members are Bellevue, Bennington, Boys Town, Gretna, La Vista, Omaha, Papillion, Ralston, Sarpy County, Douglas County. The Papio-Missouri Natural Resources District serves in a voluntary capacity as the administrative agent for the partnership's activities. Douglas County remains as a member of the partnership, but seeks a different approach to solving water problems. Washington County, which is the northernmost county in the watershed, has not become a member. This partnership has been working together for over six years. The goals of the partnership are several. The partnership is in the process of completing a comprehensive watershed plan that will be technically proven to improve water quality and reduce flooding. Nine of the 11 partnership members have adopted the policies developed by the partnership. Douglas County has not. The city of Bennington has not at this point. Their first goal is storm water management financing. That's what we're talking about today. They must deal with peak flow reduction; the runoff from rains. They must deal with pollution control; landscape preservation, restoration and conservation; erosion and sediment control; flood plain management. Those are lofty goals that could become an example for communities across this great state. LB880 deals with the first goal: water management financing. What it amounts to, what this bill is all about, is simply allowing the partnership, through the NRD, to have bonding authority to be paid within the existing tax levying authority of the NRD. It allows for long-range and larger projects. So what have been the problems which have brought this cooperative effort? Well, there are three basic problems: polluted streams, flooding, and flood plain designations. A recent study of the streams in Douglas County, which was funded by Douglas County Board, shows some very disturbing things. Douglas County has over 400 miles of streams. All the streams assessed, except one, was impaired or degraded. Six streams or segments of streams have E. coli levels that are so high that they are considered health hazards. Streams have changed to become simply ditches to expel flood waters, taking away their own cleansing powers and leaving them with contamination problems. Stream banks have been degraded by dredging and development, leaving the streams with erosion and contamination problems. All of this eventually dumps into the cities of Papillion and Bellevue. Douglas County is rapidly losing its streams. We have to correct that so that streams can again contribute to our quality of life. Second problem: Flood control has always been a high priority of the Papio-Missouri NRD. It has had to be. Forty-four years ago, a severe storm stalled over eastern Nebraska. Forty-four years sounds like ancient history to many of you in here. Perhaps it is. But that's not so long ago in flooding history. June 16, 1964, that storm dumped more than eight inches of rain in Omaha, Bennington, Millard, Ralston, and Papillion. That storm caused the greatest flood on record in the metro area, Papillion Creek Watershed. Flood waters in area creeks rose so quickly that full evacuation was prevented. Seven deaths occurred. About 18,000 acres were flooded. Seven deaths. \$5.5 million in '64 dollars. In 1968, the federal government passed the federal Flood Control Act. The U.S. Army Corps of Engineers set out on an ambitious project for flood control in the Papillion Creek

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Watershed. They devised a plan for a series of 21 dams. The Corps built four of those lakes before funding dwindled and interest waned. That was Glenn Cunningham Lake, surface area 392 acres; Standing Bear, surface area 135 acres; Zorinsky Lake, surface area 253 acres; Wehrspann, surface area 246 acres. These are not large lakes. They were completed in the '70s and early '80s, so they've solved the problem, right? Well, fast-forward to 1999, less than nine years ago. Friday evening, August 6, heavy rains in the north and east-central Nebraska; rain amounts of 6 to 12 inches. For Douglas County, 10.48 inches, the greatest rainfall over a 24-hour period in Omaha. One death occurred. Governor Johanns requested a major disaster declaration for counties of Burt, Washington, and Douglas. [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR KOPPLIN: President Clinton declared those counties a major disaster. An opponent to what I want to do has stated he remembers the flood of 1999--it was mostly parks and such. Well, listen to this. One death; one home destroyed; 33 homes with major damage; 1,015 homes with minor damage; another 192 residences affected but habitable; 2,700 individuals and businesses applied for assistance; five local governments reported severe damage to road systems; three bridges in Washington County were severely damaged. How much time? [LB880]

SENATOR AGUILAR: Thirteen seconds. [LB880]

SENATOR KOPPLIN: All right. I'll have to finish later. Thank you very much. [LB880]

SENATOR AGUILAR: Thank you, Senator Kopplin. You have heard the opening on LB880. Those wishing to speak are Senator Preister, Christensen, and Friend. We do have committee amendments first. Senator Louden, as Chair of the Natural Resources Committee, you're recognized to open on AM1787. [LB880]

SENATOR LOUDEN: Thank you, Mr. President, and members of the committee and members of the body. The committee amendment does three things. First, it limits the size of the reservoir or water quality basin to those projects having a permanent pool of 500 surface acres or less. Second, it requires public access for any project that has a permanent pool greater than 20 surface acres. And third, it prohibits a district to turn over to a nonpublic entity any real property acquired by eminent domain for a water project. I would ask the body to adopt the committee amendment. Thank you, Mr. President. [LB880]

SENATOR AGUILAR: Thank you, Senator Louden. We now have amendments to the committee amendment. Mr. Clerk. [LB880]

ASSISTANT CLERK: Mr. President, the first amendment to the committee amendments

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is offered by Senator Pedersen, AM2101. [LB880]

SENATOR AGUILAR: Senator Pedersen, you are recognized to open on AM2101. [LB880]

SENATOR PEDERSEN: Mr. Speaker, I would ask to substitute that amendment with AM2068. (Legislative Journal page 1073.) [LB880]

SENATOR AGUILAR: So ordered. [LB880]

SENATOR PEDERSEN: With that, Mr. Speaker and members of the Legislature, let me start by speaking about my chair mate back here, Senator Raikes. When Senator Raikes first came to the Legislature, his first day in the Legislature, sitting here beside me, I had a bill up that he did not like. I don't remember what the bill was at that time, but it came to a vote. He looked at me thinking because I could read on his mind that there was...should I vote for this or...just because you're my seatmate or not, and I looked at him and I told him, if you ever vote for a bill just because of one of the other people in here, and especially me and you being friends from this point onward, then you're doing the wrong thing. I bring that story up because I hope Senator Kopplin will feel the same way about me today. Senator Kopplin, I think, has served his district well, and his district would like to see this bill passed. But I'm going to be a fly in the ointment and tell you there's nothing about this bill I like, and it has to do with the Papio Creek NRD. The bill itself, or the amendment that I have would lower the levy from 4.5 cents to 3.5 cents, which is an issue I bring up only so we can converse a little bit about this bill before we get going. I have no intentions of carrying this particular amendment to a vote, but I want us to discuss LB880 and some of the things that have happened to me and some of my constituents as far as LB880 goes. The main emphasis of Senator Kopplin's bill is to bond. Bonding will raise property tax. The Papio NRD has not been forthcoming and has not always been good stewards of the money they now have. They have a plan that has not been finished. They have not had any hopes of this plan being done before we go sine die in three weeks. Are we to trust them with purse strings when we don't even know what they're going to spend the money on? Now NRDs, I believe, is a good thing. But again, I don't believe the Papio Creek NRD has been good stewards of their money. It is, to me, mind-boggling to try and give people authority to raise money when they don't know where they're going to spend it. I know a big part of it is supposed to be dams, but the meetings that Senator Preister set up with all of the people who were involved in this and wanted to be involved, which included a lot of us in this room--and I thank Senator Preister for that. He tried very hard to bring the sides together. But I can tell you from my own experience that the people who talked at them meetings that had any experience or expertise in this field believed that the low-impact development does and will work. The NRD did not come up with any evidence or expertise saying that it wouldn't work, but they give me that old impression that my dad used to say when somebody wanted something and didn't care what else happened,

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dam the torpedoes, full speed ahead, is what they have given me the impression. I went to one of these NRD meetings a little over a year and a half, almost two years ago, and I said I wouldn't go back because of the way the people that came to that meeting were treated. They were not allowed input. They're from Washington County so we want to do what we're going to do, and who cares what they want? I'm hoping that you people will ask lots of questions of Senator Kopplin and his LB880, this amendment--I know there's quite a few of you that have introduced amendments yourselves--and let's go from there. Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Pedersen. You've heard the opening on AM2068. Those wishing to speak are Senators Preister, Christensen, Friend, Gay, Kopplin, and Wallman. Senator Preister, you are first and you are recognized. [LB880]

SENATOR PREISTER: Thank you, Mr. Speaker, friends all. I rise to give a little bit of background on what we've been doing, and I will start by thanking everybody who's been involved in this process. It isn't just this session process, but it's been going on for a number of years and a number of bills. Certainly this is at least the second one for Senator Kopplin. And I do appreciate his sincerity and his efforts to try and find a solution to try to deal with, one, the federal requirement of dealing with the Clean Water Act and the requirements that are in that to deal with the runoff that is going into our storm waters and polluting our waters. That does have to be dealt with and we need to find a solution to it. It's not been easy coming up with a solution. We have had bills when I served in the Natural Resources Committee and we've had them since to address that issue. I supported what Senator Schrock, who was then the Chair of the committee, was attempting to do in getting a storm water fee so that those who contributed the most to the problem paid for the solution. It seemed fairest to me. What I didn't want to see is a shift onto property tax, and I think others on the committee felt the same way. Better to have those who create the problem pay for the solution than to put it on property tax owners, put it on property tax, make everybody pay. And I thought that was fair. Senator Schimek introduced a bill, LB534 this year, and she was attempting to try and do that very same thing. Unfortunately, there's a list in the committee statement that goes on and on, and I think it's got just about everybody listed except the Sergeant at Arms, in opposition. I don't know that the committee could have done much else other than to kill the bill. I mean, I think it was probably the best solution. But when you get all of these powerful groups coming in, saying even though we're causing the problem, even though we're causing the pollution, we just don't want to pay for it; let the homeowners, let the property tax owners pay for it; the committee didn't have a whole lot of option. They killed the bill. If I were on the committee I probably would have been tempted to do the same with that kind of powerful opposition. But the end result is then that's no longer on the table. Senator Kopplin is trying another way. He's wanting to provide bonding authority for the NRD so that they can use bonding, which would be paid back by property tax, which I think is inherently more costly and unfair, and I have always opposed the bonding authority. However, I have certainly sought to bring the

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different sides together, along with Senator Kopplin, to see where we could come to some resolution. The problem exists. The NRD, the cities, the counties, all are being faced with trying to deal with water quality, primarily. At least that's what much of this debate was started upon and where the bills began to be introduced. We have also the NRDs having the charge of dealing with water quantity. And yes, there are times, although we haven't seen them lately, there are times when we get more water than we want. We wish some of that water would somehow be channeled down into the Republican River Valley,... [LB880 LB534]

SENATOR AGUILAR: One minute. [LB880]

SENATOR PREISTER: ...and we could use it where it needs to be used, but that isn't what happens. We do need to look at recharge. We do need to look at using that water. I pressed my light again because I don't think I have enough time to go into some of, I think, what were positive efforts to bring the two sides together and discuss a little bit about where we have agreement. I will just, since my time is about out, add: When it came to bonding, we did not come to agreement. And rightly, wrongly, sadly, or happily, I don't think we're going to get to agreement on bonding. We have some other amendments. I have a couple myself. We will be talking about some changes and some requirements if there is bonding, but at this point I will just conclude. We have not reached any real agreement on whether or not people can agree on bonding. [LB880]

SENATOR AGUILAR: Time. [LB880]

SENATOR PREISTER: Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Preister. Senator Christensen, you are next; you are recognized. [LB880]

SENATOR CHRISTENSEN: Thank you, Mr. President, fellow senators. I just want to bring a little background on this bill and different options that can be done. I know there's been concerns with people on they don't want wet dams, I would call them, and people building around and cooperative work between them, and using public dollars to help that situation, and yet there is probably a need in the area for dams. So I just wanted to explain some different issues that can be done here. There can be...if you have to have dams, you can use dry dams, which you put up a dam that holds back the runoff water, it has a tube in it to drain it that will guarantee that you don't have downstream flooding occurring, because it's regulated, what's going through. So if you're one of the senators that's opposed to the wet dams then this is maybe an option you need to look at is having dry dams. In them dry dams, to make them effective, what places have done is went in and put in ball fields--soccer, baseball, everything that way--and soon as the water is drained out, went down, you've got recreation fields. There's a couple examples in Omaha that could be mentioned that are used that way as

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wet areas, and then when they're drying up they go back to playing. That's an option for you. If you're concerned about the public-private cooperation, that it's benefiting somebody, you can either put so many years' amendment on there before building can occur around it; you can put in there it has to have open access for the public to use the dammed-up water. There's a number of ways that you can handle this. I bring this up because I guess one of my frustrations down here is we are reactive, we're not proactive. This bill here is attempting to get to be proactive to be able to develop things that we reduce the flooding for the future, we reduce the impact right now. You have problems of flooding in Papillion-La Vista, so without some way of slowing that water down, you either got to come in and dredge them streams out deeper and wider, or eventually, as you build in them floodplain areas, you're going to widen that floodplain. So there is a number of things that got to be addressed that this bonding authority would allow. But what I'm saying, I believe you need to be proactive and come up with solutions. But if you got concerns about wet dams, cooperations, then put a limit on it--the size or how quick it can be built on; make them dry dams. There's a number of ways to work with all sides in this issue to be able to develop this into a proactive situation. Another thing that you might want to look at is prohibit building in floodplains. You know, what we've seen is allowing people to build in floodplains, they'll have to raise their buildings an extra foot or two foot to get out of that floodplain. Well, when everybody does that and there's not an engineering plan ahead of it, all of a sudden the floodplain widens. Now you've got these businesses or houses that were out of the floodplain... [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR CHRISTENSEN: Did you say time? [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR CHRISTENSEN: Oh, thank you. You've now got businesses and houses that are now in the floodplain, additional insurance requirements, additional concerns. So I think there's ways that we can be proactive on this and still limit the concerns that I've had. I've had the opportunity to have both sides in my office. I've been at some of these other meetings and I appreciate the fact that both sides are at least talking. I don't know that they've got totally together, but I think we can set some bare-bones framework that can make it work for everybody and that's why I have addressed a number of these issues here. And if anybody has got questions on them, I would gladly answer them, as you get to it on time or come up to me. I'd be glad to work with you on that. [LB880]

SENATOR AGUILAR: Time. [LB880]

SENATOR CHRISTENSEN: Thank you. [LB880]

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SENATOR AGUILAR: Senator Friend, you are next and you are recognized. [LB880]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This is an interesting...this is extremely interesting subject matter. It doesn't seem like it right now, but it is, and it is for dozens of reasons. This bill deals with 10 or 12 issues that a heavily populated area has to try to handle, environmental issues that a heavily populated area has to try to handle. Let me address a couple of key issues. And I got a chance to talk to Senator Kopplin off the mike a little earlier and I'm going to relate a little bit of that conversation on the mike here. But the two key issues that I think that I wanted to discuss or deal with right now is whether or not an NRD...one of the issues that this bill brings out to us is whether or not a natural resources district in this state should have bonding authority. It's as simple as that. I'm oversimplifying it, but that's what we're dealing with right at this point. And that raises a bunch of questions in itself. There are a bunch of subsets. For example, it raises the question of, where are the limits on that bonding authority? How much can an NRD bond for? We know what a school can try to bond for because they have to go out to the public and ask for that bonding authority. Usually that stuff is laid out by the time it gets into their hands. The second aspect, and this is really important and Senator Preister noted this...and Senator Preister and I, for as long as I've known him, disagreed on the thought process in regard to the NPDES, the National Pollutant Discharge Elimination System. The Clean Water Act of 1972 more or less gave the EPA the ability to go...and right now I think that they've gone to 45 states and said the NPDES is going to be a mandate on municipalities, industrial facilities, some government...some government facilities, like a big...like Strategic Air Command, would be my understanding. This is problematic. It's an unfunded mandate. Senator Preister is absolutely right, what they're looking to do is try to figure out how to satisfy NPDES. Well, make no mistake about this, no mistake, and I don't think anybody is trying to hide it, this is a potential resolution. This bill is a potential resolution to the unfunded mandate created by the 1972 Clean Water Act. Now my view is this: That mandate is a specific mandate to municipalities, among the other two things that I mentioned, but it's not a mandate to a three-county or four-county area. Giving an NRD--and this is just food for thought--giving an NRD bonding authority is overextending what even the federal government is actually asking for. (Laugh) Members of the Legislature, this is complicated subject matter, okay? And I'm not saying that to scare anybody or to try to... [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR FRIEND: ...to try to force Senator Kopplin's bill into a no-man's land. It is complicated subject matter and it deals with the two specific pieces of...or two specific issues that I brought up. Totally separate. But they deal with subject matter that I don't think can be resolved in an hour or two hours or four hours. This is an eight- or nine-hour bill, I mean it's as simple as that, and we've got 12 days left. And quite frankly,

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folks--this was where the discussion with Senator Kopplin came in--I don't know if we're there. Look at your gadgets. I'm part of the problem, not part of the solution. I've got one of those amendments. But there's a lot of amendments on this dictating or promoting the idea that it is difficult subject matter. I don't know where to go with this. I'm telling you it's going to take an awful long time and I don't know if we can get there, not with the limited amount of... [LB880]

SENATOR AGUILAR: Time. [LB880]

SENATOR FRIEND: ...time that we have. Thank you, Mr. President. [LB880]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Gay, you are next. You are recognized. [LB880]

SENATOR GAY: Thank you, Mr. President. I rise in support of LB880. And as you're hearing from many people here the reasons why, I couldn't agree more. I mean we're stating the case here. Senator Kopplin stated the need. Now we're stating the case of how we got to this point. Senator Friend alluded to it is an unfunded mandate. It's an unfunded mandate that cities, counties have to deal with, and we haven't found a solution yet to deal with it. We're asking for regional cooperation and we've done that, in the most part. There are some concerns, obviously, from others on this bill and that's shown by the amendments that are filed, and that's very well and we should be discussing these things. And I've got friends on both sides of this issue and have worked with those that are for it and those that are against it, and they're all good people and they're trying to find a solution to a very difficult problem, and the problem is it's costly. Costs a lot of money. Senator Preister discussed the storm water fees to deal with it. That went nowhere because people didn't want to deal with the problem, but we're all contributing to this problem. As development is going in this district, in the...and this would mainly be, for this case, in the NRD in the Omaha area, but as we add more homes, streets, parking lots, whatever, we're creating runoff problems, water quality problems, issues we have to deal with. And the federal government has asked the cities, counties, and local people to deal with this issue, and that's kind of ultimately what I'm getting to. I think we need to have this discussion and it may take awhile. Today we're going to, you know, we have our schedule, but it's an important discussion that ultimately the Legislature is going to have to decide. And does it require bonding? Yes, it is...that's...if you want to make it simplistic, yes. But we need to find ways that everyone can agree with that. We may never find that solution that everybody agrees with. On most compromises, you don't find a solution that everybody agrees with, and in all compromises probably it's that way. So as we look at this bill and we look at the issues, as we discuss those...Senator Preister discussed a lot of it. I thought he was right on when he explained the problem and how we're getting there. And I think we need to take the time to explain the problem, how we got to an unfunded mandate. How it hasn't been dealt with yet, how people are working to deal with the issue. There have

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been meetings and meetings and meetings on this and I commend those people who have the persistence on this issue. It's difficult and there's some tempers flare. I've been to several of those meetings. I was involved in this...how things...how far back this goes. Probably six or eight years ago we started getting these committees together in the local counties and cities and formed a coalition to work on this exact issue. Whether you like the NRDs or not, we're asking local elected officials to make tough decisions. They come with a solution and then we're not going to give them the tools to implement their decision. Is it completed yet? I'm not so sure yet. I think they're coming a long ways, like I say. But when you ask these people to do something, then we don't give them the authority or the funding to do it. It's very frustrating. That's frustrating not only for those people who are taking the time to serve the public in their position, but it's also frustrating for those people who need the help. And the people who are going to benefit from this is the public. As Senator Kopplin mentioned on some of these storms we're getting, we've been fortunate up to this point. If we get some large rains, and you can see it on the news right now, you're seeing flooding in different states, but we've been fortunate to this point. Ultimately, we better come with some solutions. Senator Christensen had some good recommendations and... [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR GAY: ...we've been dealing with this issue, and I think these are regional issues as we've discussed. Last year we dealt with it, this year we dealt with it, with different water issues and natural resource issues. I think in the future we're going to continue to deal with these issues no matter what, so every session you can probably get ready to deal with some kind of environmental or water quality issue. So not only do we have infrastructure issues and how we're going to deal with those, we're going to deal with that now on this bill but also we're going to, after lunch, we're going to deal with the same problem where we're not funding our commitments that we're making, and they are good discussions to be having. So I'm just looking forward...I just wanted to get up and kind of state where we're at and tell those people that have been working hard on this issue that we appreciate it, and have a good discussion on this. And I hope we will get the time, if we don't get it done yet this morning, that we come back and visit this issue, and people will be participating due to the amendments. So with that, Mr. President, I'd yield my time back. Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Gay. Senator Kopplin, you are next. You are recognized. [LB880]

SENATOR KOPPLIN: Thank you, Mr. President. First of all, to Senator Pedersen, we will indeed be friends when this is over; however, if you vote for my bill, we'll be best friends. (Laughter) Property taxes would be levied within the existing authority of the NRD to do it now. That's one and three-eighths cents that they could increase, which is \$13.75 a year per \$100,000 of valuation. We have already given NRDs bonding

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authority. If you will recall, we helped the Republican Valley out of their problem. Well, now we need to help the Papillion Creek Watershed out of their problems. I didn't get a chance to finish what I wanted to say was the third problem, and that is floodplain. That was touched on by someone, but millions and millions of dollars in Omaha are now sitting in the floodplain. And how did it happen? Those people built out of the floodplain. Building permits, developments, zoning, all was done without a whole lot of thought. So we have all this water coming off and changing the floodplain, and now we have these millions and millions of dollars sitting in the floodplain. We can help that out with some projects, but we have to be able to pay for them. I remember one of the opponents said, well, there's some personal responsibility here; they shouldn't have built so close to the floodplain. I refer you back to the Republican Valley and we have talked about this many times. How many times haven't we heard, those farmers did nothing wrong; yes, they pumped the aquifer dry, but they did everything legal. Well, so did these businesses and people. They built legally. It was government that changed it for them, and I'm not so sure government can't be held liable for their problems. We have a lot of amendments on this bill. Most of them are just for time consuming. I have an amendment coming up that tells you all the concessions I have made. Senator Preister has met with everybody, but I can assure you, and I have great respect for Senator Preister, but if he could make this an environmental bill he would. We have much to deal with. We can kill this bill and maybe that's what's going to happen, but that doesn't change anything. The NRD still has its taxing authority. We have done nothing for any of the cities. In the packet that you received there are letters of support from many of the cities, including the city of Omaha. These people are crying for help. We can do it. We can correct these terrible problems in the watershed; be an example to others of how you can work together as a group and solve the problem. Or we can let it die and piecemeal it all together and hope that it doesn't rain enough to drown Bellevue and Papillion and Omaha and everybody else, because it has happened less than nine years ago. That's just like yesterday in flood history. It's coming. We have to deal with it. Some of these amendments, for instance this one that... [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR KOPPLIN: ...Senator Pedersen put on, reduce the NRD's authority. He says he's not going to carry it forward, but that's beside the point. These are silly amendments. We don't have time. We need to deal with the problem. We need to vote up or down and then just go with it. Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Kopplin. (Visitors introduced.) Next in line to speak is Senator Wallman and you are recognized. [LB880]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, have trouble giving NRDs bonding authority. But going back to what Senator Christensen said about dry dams, wet dams. A dry dam, you're going to...in my area, we have--at

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least one of my friends has one--it's a weed patch. Nobody will want to build a house around a weed patch, and it takes up farm ground...and if you give easements. So the NRD took this land from this farmer and gave him very little compensation for a dry dam, so he is not a friend of my local NRD. But in regard to the floods, you know, we talked about the Republican River Valley, somebody did here, and I heard the word scour. Floods scour the riverbeds. They clean out the trees, they clean out the trash, they clean out the bacteria, they clean out lots of bad things. So floods are a natural phenomena that's going to happen. If we get a foot of rain in Lincoln here, Holmes Lake and all them, if they have them full, it's not a flood control issue. And what if one of these dams breaks? Because they're still going to have development below these dams, and to me that is definitely a floodplain. Because these dams have been breaking, the older ones like in Colorado, Ohio, Pennsylvania, so then we have floods below which kill more people than in Omaha and Papio. I appreciate people living in a floodplain. They were probably told by developers it would never flood, and that's what developers do. They try to buy land cheap and they develop it, and then they want a lake so that will increase their land values. And everybody wants to build around a lake nowadays, my area also. And it is nice, serene atmosphere if you live next to a lake or a pond. But a dry dam is the only true flood control because it will be empty. You have the valve shut, and then when you get a big rain it will hold all that runoff. If you have a structure full of water, folks, that's not true flood control. You've just slowed the water down a little bit. But if you get a ten-inch rain, it will go around the spillway and you'll still have high water. So floods are a natural phenomena. They clean up our riverbeds. They scour them out of unwanted vegetation. So if we're talking about floods, we're talking about the valley here. Big dams do cause tremendous changes in our environment in the rivers. They slow the water down and they cause...be a steady...maybe a lot lower flow. It won't ebb and go up and down. So if we're talking about bonding here to resources, natural resources, I can't support that because I think they got the funding mechanisms in there now. And whether it be for flood control or storm issues, whether we pay for it in property tax or storm fees. And as Senator Preister, good friend Senator Preister mentioned, you think it would be more fair on storm fees. If everybody paid it, maybe. But farmers also contribute to runoff. So then probably you're looking at property taxes, which I hate. But we have to look at storm water quality. And like I said before, most quality water issues are not antifreeze or any of these things off the parking lots. It's animal feces off the lawns of the local people. So storm water quality is an issue for the federal government, and maybe it should be for us. [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR WALLMAN: But let's think about what we do before we grant NRDs more authority to levy on your property taxes and spread it out. Thank you, Mr. President. [LB880]

SENATOR AGUILAR: Thank you, Senator Wallman. Senator Pedersen, you are next.

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You are recognized. [LB880]

SENATOR PEDERSEN: Thank you, Mr. Chairman, members of the Legislature. Every one of my amendments have a point. They have a point that was brought to me by my constituency. The constituency that's most involved in my district would be that in Washington County. But another good part of my constituency is Douglas County. The Douglas County Board of Commissioners do not support LB880. The city of Omaha does and I want to say that up front. But my statement to the city of Omaha is, our Mayor Fahey, who we got a letter from saying he supported LB880, does not go all the way to say that if LB880 was enacted that it's going to raise property tax. That's why our school boards have to come to the people, or a vote of the people, for bonding of new buildings and property. And when they do, that bond will tell you how much they want, how much you're going to spend, how soon it will be paid off, what the interest rate is and everything else. In LB880 we don't have that. We are giving them an open blank check for something that they don't even know yet themselves what they're going to spend it on. They have a study and that's why I said they've been disingenuous, because that study has been coming for a long time and it's still not done. Senator Christensen mentioned options. Maybe them options are in that study, but we don't know, and we're asked to put money forward or give them the green light to go out and ask our constituency for money with bonding that they don't even get to vote on. Should we be giving authority for anybody or any agency or any group to go out and ask for people, tax dollars for just in case? Just in case? And that's all we have in this case, people, when we're talking about a study that we don't even have. Another year looking at that study. And I have an amendment down the line here that would set up a board to look at that study when it comes out, which would involve people from all areas, and the stakeholders in this issue would decide then what to bring to the Legislature. I see LB880 as giving the Papio NRD a blank check, and any of us with any kind of an economic education or experience don't want to do that. Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Pedersen. Senator Preister, you are next. You are recognized. [LB880]

SENATOR PREISTER: Thank you, Mr. President. I want to go over a few things that were said. Senator Gay made a comment about elected officials having the authority to make the decisions. I think, in part, that's true, but in part that's the concern that I heard from some of the residents. The partnership has each of the members of the partnership, the cities and the counties and others, who have a representative that represents them, but only one elected representative attends those meetings. That's Clare Duda from Douglas County. All of the other bodies, it's not elected representatives who are making the decisions. That's one of the concerns that people have when you have nonelected people making decisions and those people can't be held accountable. So what was said was partially true, but partially not true. The other thing that was mentioned was NRDs do have all the tools that they need. We clarified that. They can

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condemn property right now, they can build dams right now, and in their budget they have included dams, so they have money set aside and they are doing that. They do not have specific bonding authority, although the cities and the counties do have bonding authority. They have all of the mechanisms that they need to deal with both issues. The one issue that they're asking additionally is to have bonding authority. I understand why they're asking for it. But when it comes to understanding, people on both sides said that the two goals need to be that we need to improve water quality--no disagreement; that we need to address water quantity issues and we need to do that through flood control measures. And the NRD has that as its charge. They've got flood control, they've been doing channelization. They don't have zoning authority but the partnership has zoning authority. And first and foremost, we have to make sure that zoning authority in the floodways, in the floodplain, is regulated. If the former director of the NRD, Steve Oltmans, must have told me at least a dozen times, if we keep building in the floodplain we're going to continue to have problems. And yet we keep granting permits and we continue to build in the floodplain. We've got to stop the building in the floodplain. That's first and foremost. That was the message that the Revenue Committee sent to the NRDs, and we thought to others, when this bill was killed in the Revenue Committee last year. The partnership has the tools. The partnership is currently working. They're putting their plans together. They're getting approval on the plans, which is one of the requirements for the federal NPDES permit that Senator Friend mentioned, which is the only federal requirement. There's no federal requirement to build dams or to do any of these other things. The federal requirement is to prevent pollution from entering the waters. If we concentrate that in building dams, one of the things we do is concentrate the pollution. We have on the Web site for the NDEQ the list of impaired waters, and I would encourage all of you to look at that because we have a lot of impaired waters in this state. And on that list is the Papillion Creek, the Big Papillion Creek, the West Papillion Creek, the Omaha Creek, and the lakes that we currently have. Wehrspann Lake, Zorinsky Lake. Carter Lake is on there but we're not dealing with another state. Standing Bear Lake, Glenn Cunningham Lake, Crystal Lake, and Candlewood Lake. [LB880]

SENATOR AGUILAR: One minute. [LB880]

SENATOR PREISTER: Part of the problem, when we look at dams and lakes as the solution, it may deal with flood control but it concentrates the pollution. One of the things we've got to do, and that's the federal requirement, is deal with runoff and pollution. So to get bonding authority to build dams is not a good answer to pollution and it shifts the burden onto property tax owners, which is a problem for the property tax owners in my district. I think there are lots of things that are being done currently, lots of things that are being worked on. The partnership is a good part of the process. We have...and I live in Bellevue, incidentally, and I live a half a block from a creek, and I'm on the low end I assure you. If I thought those dams were the only answer and the best answer... [LB880]

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SENATOR AGUILAR: Time. [LB880]

SENATOR PREISTER: Thank you. [LB880]

SENATOR AGUILAR: Thank you, Senator Preister. Mr. Clerk, items for the record? [LB880]

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Nebraska Retirement Systems reports LB968 to General File. Committee on Transportation reports LB1034 and LB1129 to General File, and a report on a gubernatorial appointment. New resolutions: LR292, LR293, LR294, LR295 calling for interim studies, offered by Senator Adams; those will be referred to the Executive Board. Your Committee on Enrollment and Review reports LB986, LB986A, LB888, LB1068, LB958A, and LB1058, all to Select File. (Legislative Journal pages 1096-1101.) [LB968 LB1034 LB1129 LR292 LR293 LR294 LR295 LB986 LB986A LB888 LB1068 LB958A LB1058]

And I do have a priority motion. Senator Erdman would move to recess until 1:30 p.m.

SENATOR AGUILAR: All in favor say aye. Opposed, nay. We are adjourned.

RECESS

SENATOR AGUILAR PRESIDING

SENATOR AGUILAR: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR AGUILAR: Thank you, Mr. Clerk. Do you have items for the record?

ASSISTANT CLERK: Mr. President, I do. Amendments to LB880 from Senators Dubas, Pedersen, Friend, and Hudkins. That will be printed in the Journal. (Legislative Journal pages 1102-1104.) [LB880]

SENATOR AGUILAR: Thank you, Mr. Clerk. We will proceed to the first item on this afternoon's agenda. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB846, introduced by Senator Fischer. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Committee

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on Revenue. That committee reports the bill to General File, with committee amendments. (AM1731, Legislative Journal page 627.) [LB846]

SENATOR AGUILAR: Thank you, Mr. Clerk. (Visitors introduced.) Senator Fischer, you are recognized. [LB846]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Last session I was asked by a number of you, both on and off the floor, to come forward with a highway funding plan for discussion during this session. I took that charge seriously. LB846 is the product of our research and discussions. Before session began I invited all senators to meet with me and discuss this proposal. I also sent a report on highway funding compiled by the Transportation and Telecommunications Committee counsel to all of your offices, along with a draft of the legislation that we are discussing today. Nebraska has consistently been a pay-as-you-go state in regard to highway funding, with highway revenue coming in the form of the fuel tax, sales tax on motor vehicles, and vehicle registrations. LB846 is in line with this policy of user fees. Under this proposal, those who use the roads will continue to pay for them. LB846 lowers the fixed portion of the fuel tax by eight cents and imposes a 5 percent excise tax on the gallons sold in Nebraska, based on the average wholesale price of gasoline over a six-month period. This will be added to the wholesalers' gas tax bill they pay each month to the state. Let me explain how we envision this wholesale tax to work. In April and October, the Department of Revenue will average out the past six months of the monthly wholesale price of gasoline in Nebraska. The average wholesale price is the index, then, for the next six months. The fiscal note of LB846 sets the average at \$2.26. The 5 percent wholesale tax is multiplied by the average wholesale price to come up with the tax amount. Five percent of \$2.26 is 11.3 cents. This 11.3 cents would be added to the gas tax that wholesalers currently collect for the next six months on each gallon sold in Nebraska; 11.3 cents, that wholesale tax, plus two cents that go to the cities and the counties currently, plus 2.5 cents, which is the fixed portion of the gas tax, plus that 10.5 cent variable, which as you may recall, dropped four cents January 1, would then equal 26.3 cents per gallon the wholesalers will pay on each gallon of gasoline for the next six months, unless the variable needs to be adjusted in January or July. In other words, the wholesale tax adds another component to our fuel tax. Just as our current variable portion of the fuel tax uses a formula every six months to compute a number, so does this proposal. It differs, in that the current fuel tax is based on quantity; that is, the number of gallons sold times the fuel tax, whereas this wholesale tax will be based on price and quantity. We take the average wholesale price times 5 percent, times the number of gallons sold. The reason for this change is to keep pace with inflation. As the wholesale price of gasoline continues to rise, so too will the revenue collected by the state. Under our current system there is no factor to account for inflation. LB846 calls for a decrease in the fixed portion of the fuel tax by eight cents. That would offset some of the revenue that will be collected through this new wholesale tax. We decreased the fixed portion, because that portion of the gas tax is shared between the state, counties,

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and cities, and those local governmental entities will receive a portion of this new wholesale tax. However, the shared percentages are altered under LB846. Currently, the state receives 53 and two-thirds percent, and cities and counties get the remaining 46 and two-thirds percent. Under LB846, two-thirds of the revenue from this tax on the wholesale price will go to the state. The other one-third will be shared by the cities and the counties through our Highway Allocation Fund. This wholesale tax will be collected in the same manner as the current gas tax is collected. Whoever pays the fuel tax now will also pay the wholesale tax. The current fuel tax is collected at the wholesale level. The retailers do not currently pay the fuel tax to the state. It is in their underlying costs that they pay to the wholesaler. The retailers then include the fuel tax in the price of gas that they charge to consumers. Both the fuel tax and the wholesale tax will continue to be done at the wholesale level. If this bill is passed, the Appropriations Committee will be able to propose the Department of Roads biennial budget as they normally do, with taking this new wholesale tax into account. The Legislature, this body, still has the ultimate control over how much the Department of Roads can spend through our appropriations process. If the Department of Roads' budgetary authority is not increased, we will see the variable portion of the fuel tax decrease to make up for that additional revenue that the wholesale tax will bring in. There are several reasons that I feel that this proposal is best for Nebraska. It's compatible with our current system. LB846 can have a symbiotic relationship with our current fuel tax. It's also consistent with our long-standing policy in this state, that our highways are paid for by the people that use them. LB846 adds an inflationary factor to our funding system that doesn't exist under our current system. Without this factor, the gas tax continues to lose its purchasing power. When adjusted for inflation, the 27 cents that we paid in gas tax a year ago equates to 15 cents in 1987 dollars. In 1987, the gas tax was 18 cents a gallon. LB846 is a shift in policy. If we stay with the status quo, we're going to continue to fall further behind in funding Nebraska's highway system, at the state, at the county, and at the city level. However, this is not a shift in responsibility. This bill does not put increased Highway Trust Fund revenue on automatic pilot. It is still up to this body, it is still up to the Legislature, to ultimately decide the level of funding that is considered adequate. Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Fischer. As the Clerk stated, there are amendments from the Revenue Committee. Senator Janssen, as Chair of the committee, you are recognized to open on the amendments. [LB846]

SENATOR JANSSEN: Thank you, Mr. President, members of the Legislature. The committee amendment provides an operative date, changing current gas tax rate and imposing a new gas tax rate, which would begin on January 1, 2009. That's the extent of the committee amendments, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Janssen. Mr. Clerk, there's an amendment to the committee amendment? [LB846]

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SENATOR AGUILAR: Senator Fischer would offer AM2355 to the committee amendment. (Legislative Journal page 978.) [LB846]

SENATOR AGUILAR: Senator Fischer, you are recognized to open on your amendment to the committee amendments. [LB846]

SENATOR FISCHER: Thank you, Mr. President and members of the body. This amendment is at the request of the Department of Revenue. They felt that there needed to be additional clarification that the wholesalers were going to be collecting this wholesale tax beginning in January of 2009, and they felt that this amendment was needed in order to make that clarification. Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Fischer. Those wishing to speak on the amendment: Speaker Flood. [LB846]

SPEAKER FLOOD: Mr. President and members, I rise to support AM2355, AM1731, and LB846. We have a problem in this state building roads. We have a financial problem--several hurdles--not the least of which is an estimated \$90 to \$110 million suggested revenue reduction shortfall from the federal government to build highways in Nebraska. Reduced consumption in Nebraska has led to less to spend from our Highway Trust Fund. In 2017, Department of Roads projections show that we will only be able to afford about \$170 million in 2007 dollars of system preservation, otherwise known as maintenance, and in 2017 we'll have a \$2 million budget for the entire state of Nebraska, in capital construction. There's no question there's need, and the need isn't in my district, the need isn't in Senator Harms's district, the need isn't just in Omaha or Lincoln--it's statewide. It's as important as the road from Blair to Omaha, increased infrastructure in Sarpy and Cass Counties, Otoe County, expressway completion in especially critical links like Schuyler to Fremont and Norfolk to Winslow. The promise made in 1988 by the Legislature was that we would complete the expressway system in 25 years. That's one of the most important elements of the road projects that we have to the residents of my legislative district, like it is in western Nebraska and elsewhere across the state. That expressway system was to link up cities of 15,000 or greater to the interstate--Norfolk to Omaha, Norfolk to I-80, Columbus, Scottsbluff, other communities off of the interstate, but just as vitally important as those along the interstate. This is a difficult issue, and this is the first step. This bill will not solve the problem entirely. It does make necessary changes to begin a long-term process of finding long-term solutions to the completion of roads is just as important to Senator Gay as they are to me. Some days I feel like I'm from an outpost--I'm off the interstate. I live in a community 120 miles from Omaha, 110 miles from Lincoln, and for years people have pointed to Norfolk and Columbus and they've said, look at how those communities have grown. They're off the interstate. And it's true, we have. But the first question we get asked today by any industry looking to locate in Norfolk or Columbus is,

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are you connected to an interstate with a four-lane expressway? And our answer is simply no. And then we watch them walk out the door, put us on the bottom of the consideration list. Our future in communities where I'm from depends on this--not just in Norfolk, but in Pierce, in Madison, in Battle Creek, Platte Center, Columbus, Schuyler, elsewhere--depends on linking our communities to the interstate. We need to be able to compete. We need to be able to move commerce. We need to be able to have the safety associated with four-lane expressways so that our citizens can commute back and forth, given the fact that we have more truck traffic today than we've ever had. Affiliated Foods in my district has 800 trucks. In Columbus, Senator Stuthman will tell you, they have 400 to 500 semi-tractor-trailers rolling through the community, just in one business, per day. Like many of you, I have strong feelings for my hometown and the area that I represent. I enjoy driving around my community on the weekends to see what businesses have moved in or to at least learn to see what business is struggling, to find out why it's struggling. A recent World-Herald article showed that 500 people per year were moving to Omaha from Norfolk. We can't sustain that type of loss. [LB846]

SENATOR AGUILAR: One minute. [LB846]

SPEAKER FLOOD: I'm not against growth in Omaha. I want to see Omaha grow. But I want to see Norfolk continue to grow, too. I'm proud to represent the area that I'm from, but I want to leave this job someday, knowing that I did all I could, and I wasn't worried about my next election, or I wasn't worried about whatever some political consequence would be. I want to know that in 2017 we have more than \$2 million in the bank to build a road somewhere in this state. I want to know that I made the hard decision when I was in the Legislature, to find a solution instead of simply delaying it year after year after year, hoping that some magic number would arrive from the federal government, and all our roads would be built. It requires courage, it requires solution-minded thinking, and it requires your vote on LB846, and that's what I plan to do. Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Mr. Speaker. Those waiting to speak on AM2355 are Senators Johnson, Christensen, Chambers, Stuthman, Wightman, and Wallman. Senator Johnson, you are recognized. [LB846]

SENATOR JOHNSON: Thank you, Mr. President. I too also stand in strong support for AM2355, AM1731, and LB846. My friends, the sky is not falling. Yes, the tax receipt estimates are reduced, but they're still up from what they had been. The Midwest and Nebraska should be less affected than nationally, because of our strong agriculture economy. My friends, this is the One Hundredth Session of the Legislature. We all share a rich heritage from these hearty pioneers. You had to be tough to set out in your covered wagon, file your claim under the Homestead Act and stick around for five years to be able to own it. We can't imagine what the pioneers went through. One of the things that is particularly amazing to me is that one-third of the women of childbearing age

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were pregnant as they walked beside their Conestoga wagon. Yet Nebraska's population grew from 35,000 at the end of the Civil War to a million just 25 years later. I also was very fortunate to be just a half a generation behind the grandest generation that went from the Depression to building this great country. Now we are hearing how tough times are. It's somewhat amusing. Foreclosures on home loans dominate the news nationally, along with high fuel prices. Whereas these problems are certainly true and they do affect other states like California far more than Nebraska, they are not nearly as important to Nebraska, because of the strong ag economy, much of it secondary to ethanol, but corn and wheat prices are the highest they've ever been. We now hear the Forecast Board suggesting revision of these rather optimistic estimates, but our reserves are full. Rather than circle the wagons, I would suggest that perhaps this is the opportune time because of our relative good economic health compared to other states. Now is the time for a rebirth of that pioneering spirit. My friends, if we can't afford two cents per gallon on the gasoline tax now, would you please tell me when we will be able to? Call this a tax increase if you want to. If we did tax fuel, as Senator Fischer has pointed out, by the method that she is proposing, we would have three times as much money as we now do, by taxing by the gallon. [LB846]

SENATOR AGUILAR: One minute. [LB846]

SENATOR JOHNSON: We now just tax at 8 percent, rather than 27 percent that we did five years ago. Meanwhile, inflation is 11 percent. To say that adding two cents a gallon or any number like this is a hardship, is someone that's not dealing with reality the way I know it. What I do know is that if we do not make an investment--if you intend to grow, show a profit, and therefore increase taxes, that these receipts would be available in the future--failure to do so virtually guarantees that we will not have these tax receipts to grow this state and pay the bills. [LB846]

SENATOR AGUILAR: Time. [LB846]

SENATOR JOHNSON: Thank you, sir. [LB846]

SENATOR AGUILAR: Thank you, Senator Johnson. Senator Christensen, you are next. You are recognized. [LB846]

SENATOR CHRISTENSEN: Thank you, Mr. President. The thing I like about this bill, folks, is the fact it gives us a plan. If we don't set up a plan to take care of the reconstruction, the building of new roads, to have it stand on its own, then we're going to have to take income tax dollars or sales tax dollars to pay for them roads. It's no longer a user fee--it's a statewide fee. The thing also that scares me is, let's say we have another tough financial year next year. What is going to be the easiest thing to cut? The appropriations of money to take care of the roads. Then what happens? You sit there, you get to be like our neighboring states that have roads that's worse than

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ours. And all of a sudden, you're getting further behind, and then it takes a lot more dollars to get caught up. We're behind on building our expressways, and it's hurting us economically. What would it be if we got further behind on our roads, and keeping them "maintenanced" and kept up? You know, that's why I believe it's so important that we have a self-sustaining fund. We're adding a cent and a half back here, guys, and we took off four cents January 1. The formula went down four cents January 1. The price of gas was going up so fast nobody seen the cut, just reduced some of the increase. But the fact is, we just lowered it four cents January 1. We'd be putting a penny and a half back. What is better? Have a self-sustaining fund, again, or have to appropriate it? And like I said, it's going to be difficult in tough times. Thank you. [LB846]

SENATOR AGUILAR: Thank you, Senator Christensen. Next up is Senator Chambers. You are recognized. [LB846]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, with all due respect to the Speaker, to my colleagues from the western part of the state, this is their bill. When Senator Flood mentioned that people are moving from Norfolk to Omaha, and people from other parts of the rural areas are moving to the eastern part of the state, you are not realizing a net increase in the population of the state of Nebraska. You're shifting people around. They're not leaving Norfolk because they don't have roads. There are not the things in these areas to hold the people there. I don't know why you all don't want to frankly state what the facts are. So you enter this fantasy land and talk as though building roads is going to solve problems, and I doubt that you could find a single person who moves to Omaha from someplace else who will say, they didn't have an expressway out there. Well, where are you going on the expressway? There are not the lures in the western part of the state, in the northern part of the state. What you need to do, if you 're going to be responsible, is have a moratorium on the construction of new roads. I'm surprised, with all these people who know so much more about economics than I do, who know so much about engineering roads than I do, about economic development than I do, and they don't have the insight to recognize that when you have a population statewide of 1,700,000 people, there are things you're not going to be able to afford, because those people are going to pay for all of it. It makes no sense to build roads into sparsely populated areas. Businesses are not going to go where there are no people, even if you build a road there. They'll say, what kind of managers of public money do you have, when they're going to build a road that goes nowhere. You want me to build a company there, and there are no people? That's what part of the problem is, and you're building roads that are unnecessary, and you cannot afford to maintain those that you have now. I'm amazed at this! I guess I shouldn't be. I've said before that if somebody comes down here with a thimble full of brains, you can't expect them to generate a bushel basketful of sense, and this manifests it. And you all are going to stand on this floor, and with straight faces and speaking seriously as though what you're saying makes sense, about wasting money building roads, in effect, to nowhere, and you cannot maintain the ones you've got now? If you've got 500 trucks

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running through Senator Stuthman's community, obviously there's something for those trucks to roll on; 800 trucks running out of wherever Senator Flood mentioned--they've got something to run those trucks on. The answer, my friend (laugh), is blowing in the wind. I know nobody is going to listen, but one of these days when we look back on this, they're going to say one person made sense, and as always happens, nobody listened. Now these Nebraska senators at that time built all of these roads, and they're out of business, and other people are going to have to pay to maintain them, but they'll let them fall into disrepair, because they're not needed, their existence is not justified, they don't generate enough economic development to justify them. So they'll fall into disrepair and look like those pictures on those remote, rural roads that Senator Louden showed us pictures of the other day, except they'll be made out of concrete instead of whatever that stuff was in the picture they were made out of. And here you all sit. [LB846]

SENATOR AGUILAR: One minute. [LB846]

SENATOR CHAMBERS: You do it all the time! If the increase in the price of gas leads to less consumption by the public, then what are you going to do? Charge more in taxes from those who are driving? And then they stop driving, so you have to charge even more, and then pretty soon nobody is driving. You say, by God, we'd make a lot of money if people would drive their cars. It's like saying, if we had bacon, we could have bacon and eggs, if we had eggs. That's what you're talking about here, and you can't see it. Talk about sleight of hand! Illusionists! But this is not illusionism; this is delusion. But I'm going to listen and make my comments, which will go nowhere, other than into transcript. Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Chambers. Next up is Senator Stuthman, followed by Wightman, Wallman, Gay, and others. [LB846]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'm very supportive of trying to find some method where we can have a long-term solution for revenue for maintaining and building and completing some of the roads that we have started. But I would like to engage in a little bit of a conversation. I'd like to ask Senator Fischer a question or two. [LB846]

SENATOR AGUILAR: Senator Fisher, would you yield to a question? [LB846]

SENATOR FISCHER: Yes. [LB846]

SENATOR STUTHMAN: Senator Fischer, in this bill it's a tax on the wholesale part of it. The thing that I'm concerned with and I've been reading it over and over again, and I think I understand it, but I would like to get it on the record, as far as what is going to be the approach of the paying of the tax, or getting the refund as far as the dyed fuel, which

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you know, in the agriculture community, you know, we use a lot of dyed fuel, which at the present time, there is no tax on that dyed fuel. Can you explain to me how this is going to be taken care of in this bill? [LB846]

SENATOR FISCHER: Senator Stuthman, that will be treated as it is now. There's no change. This will make no change in it. It will be treated as it currently is. [LB846]

SENATOR STUTHMAN: The concern that I have, though, if there's no change and there's a tax on the wholesale part, and you go to the supplier and you get fuel, the retailer gets the fuel and he has the dyed fuel and the clear fuel, which has the tax in, is that going to be the dyed fuel as it comes out of the wholesaler? Is that where it's going to be dyed? [LB846]

SENATOR FISCHER: Senator Stuthman, there won't be a tax at the wholesale level on that, because there currently is no tax on it. And so under this new proposal with the 5 percent tax at the wholesale level, that will not happen. [LB846]

SENATOR STUTHMAN: So that will not take place, then. [LB846]

SENATOR FISCHER: Exactly. [LB846]

SENATOR STUTHMAN: So it will be the same as it is right now. [LB846]

SENATOR FISCHER: Correct. [LB846]

SENATOR STUTHMAN: Okay, thank you. And that answered my question. Thank you. [LB846]

SENATOR AGUILAR: Thank you, Senator Stuthman and Senator Fischer. Next up to speak is Senator Wightman. You are recognized. [LB846]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I too rise in support of LB846 and the amendments, AM1731 and AM2355. My district is probably a little different than many of the districts in the state, in that Interstate 80 does run all the way through my district, through both Buffalo and Dawson Counties, so we will probably not benefit as much as perhaps some other districts that have more state highways, and roads and highways through them, other than Interstate 80. I did support an increase of the fuel tax in the Appropriations Committee a year ago. I now likewise support LB846. If that makes me a tax-and-spend legislator, I plead guilty. Some will say that we...and have said, that we have got to find another way to fund road construction. I wonder when this will be, if not now, and what will be the source of this magical alternative, because it seems to me about the only other source is general appropriations. I do not see that as being an answer. I, like Senator Christensen expressed, believe it should be

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a user fee rather than a general appropriation, that that cost should be sent on to the people, or should be paid by the people that are using our roadways. And so I do support this type of legislation rather than to even consider taking it out of the general appropriation funds. Others, of course, will say that we're delusionists. I think maybe that's been mentioned previous today, and maybe we are. I think there are some areas of the state that building roads into probably will be difficult to revive some very sparsely populated communities. I do not think that cities such as Norfolk, which one of our previous speakers mentioned, is probably one of those. I do not think that Lexington and Kearney and North Platte and Scottsbluff are those types of communities. I think there is a great deal of opportunity to pump new life into these, and I think that can be improved with better roads into the area. I'd like to talk just a minute about cost, and I've done this every time we've talked about fuel taxes, because I think the cost is not as much to the public as many people are led to believe. If we had, for example--and I used this earlier, a week ago or something--a four-cent increase in our gasoline tax, that translates into some dollars, I'll concede that. And I used the example before, if one has a car that gets 20 miles to the gallon and he drives 20,000 miles a year, it's pretty easy to figure. That's 1,000 gallons that he would burn in that car during the year, and I'm assuming this is going to be passed on to the customer in some way. That four cents would come to \$40. Again, I would compare that to what people spend on other items that they apparently think are more important than perhaps the cost of fuel. I think I mentioned a time before that one carton of cigarettes costs approximately 90 percent of that \$40. A case of beer costs probably a third of that \$40 or a little more. So I think when you put it in that perspective, we're not talking a tremendous amount of money, and I don't think it's going to break the people that are using our roads,... [LB846]

SENATOR AGUILAR: One minute. [LB846]

SENATOR WIGHTMAN: ...to incur this additional tax. I don't like new taxes any better than anyone else, but I think that we do have to keep it in perspective exactly what that amounts to in the way of dollars, and in comparison to other things that we spend our money on. And it's very small compared to the total price of gasoline. Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Wightman. The speaking order is as follows: Senators Wallman, Gay, Kruse, Adams, Flood, Fulton, Johnson, Erdman, Carlson, and Chambers. Senator Wallman, you're recognized. [LB846]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Are we delusional? Maybe sometimes we all are. But I live along an expressway, Homestead Expressway, and you say, build it and they will come? That's definitely been the case for Beatrice. You know, we're the lawn mower capital of the United States. These manufacturers all came there basically after Homestead Expressway started. Now we have a biodiesel plant getting almost ready to be online. So gas taxes, or sales tax,

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whatever you want to call it, or highway use tax fund, at the present time I think that's the best option. And I agree with Senator Chambers. I think there will come a time we'll have to look at alternative funding. Iowa State is looking at this. Electric cars, when they come out, I think I want to be the first one to have one. And then out...California is looking at this, Iowa is looking at this, and some of the other states, and Arizona, I think. And then they'll have a use tax. When you get your registration per year, you'll pay so much if you have an electric car. And I can see that maybe happening. But for the time being, that's probably ten years off. So I will be gone. But please support this because in the time being, I do think, if we finish these projects, the cars, the traffic will come. And we talk about economic development, but that's not only manufacturing--that's tourism. People look at them little maps in their cars, or MapQuest or whatever you want to call them. They see that and a four-lane highway, and there's lots of nice things to see in Nebraska off a four-lane highway, not just Interstate 80. So I think we need this bill, and thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Wallman. Senator Gay you are next and recognized. [LB846]

SENATOR GAY: Thank you, Mr. President. I just handed out a legal-sized sheet. It says "Preliminary Transportation Strategy." This summer we were looking into this issue, several people, and we kind of summed it up as best we could. But if you go down through that sheet, it talks about the needs we have, and we were all talking about expressways and where these roads are going, and things like that. We looked at an eight-year perspective, because you're only going to be here for eight years and then you're gone. So what could be accomplished in eight years? I think this bill is a piece of the puzzle. I think it's a small piece of the total needs. But if you just...if you get some time, look down through there, I think these figures are fairly accurate and they're very large figures. Senator Chambers talked about the maintenance and preservation program to the existing system right now is going to run \$210 million per year of our budget. So just the maintenance of the existing programs we have now is...and then you've got to factor in inflation. This is noninflation factored, as well. But we have rural geometric improvements, urban needs on the state system, bridges that we need, railroad crossing improvements. These were all taken from the Department of Transportation's six-year plan, and that's where we got some of these needs. Then you throw in the expressway system, which is now...and we just said if it's 10,000 average daily traffic count, that would be about \$17 million a year. As we talked about the expressway systems, I put in a bill, as well, this year. I was going to put \$100 million from the cash reserves. As finances changed, it lowered to \$50 million, which is still a lot of money. Obviously, that went nowhere. Here we are...and that would just be a small piece of the expressway system that needs to be fixed. On that expressway system, are we going to look at what needs to be done first, or economic benefit? I mean, how is that going to be done? So I'm...what I'm saying is, as we have this discussion, let's look at the big picture here. This is a piece of that picture, and I think it

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diversifies our tax base, is what Senator Fischer mentioned in her opening. I would agree with that. However, now we are at a high tax...or we're at a high per-gallon rate, but you know, what happens if those rates go...if the gas...the wholesale price goes down, where would we be? I think we've got to look at that. And also, this doesn't take effect, as she mentioned, till we go fund the program. So it's still a difficult decision when it comes to fund the programs. But I think what she's doing...and I commend her, because she's coming with a solution. Instead of saying we need to do this, we need to do that, she has an actual solution, and we're here to discuss it, and I commend her for that. And it sounds like we're going to have a good discussion as we listen to who's in line to speak. Then we'd look at the local needs, and those are just based on the three-year totals of some of the local needs that are out...that's another \$40 million a year. We're still waiting to see what the federal government is going to do on a transportation bill, and I know some people are waiting to see that. They will do that...this is in addition to what the federal government will, assuming they fund it as they have funded it. Maybe they will fund it more and maybe they won't. We'll know that later this summer. So when it's all said and done, we had some funding options we wanted to look into, and some of these bills were introduced this year, too--Senator Stuthman, Senator Burling, and a few others introduced an ethanol tax possibly, or a severance tax. That would be...that could increase \$60 million a year in revenue, is if we took the gallons. Increase the General Fund allocation--that was the \$100 million I was going to put in. We went to \$50 million. But if some of this comes from the General Funds and you're trying to adjust for inflation or take account of inflation and get roads built quickly now... [LB846]

SENATOR AGUILAR: One minute. [LB846]

SENATOR GAY: ...so you would avoid inflation, you do need an infusion probably. But then, the tough part comes when you increase the budget, and the variable gas tax rate would increase--and this was before Senator Fischer's bill--that variable needs to continue to increase for actually two cents per gallon for three years in a row, would yield you \$24 million, and in the third year you'd be getting \$72 million in new revenue. So we're talking big numbers here. But anyway, as you look at that conclusion, I'm going to let you read if for yourself, I think these numbers are fairly accurate. If they are inaccurate, let me know. But the Department of Roads has looked at this, and these numbers are correct. So Senator Fulton also had a bill, a discussion this summer about looking at internally some of the things that we're doing. You know, are we going to do overlays? Are we going to do concrete? There's a lot of issues here to be solved. We're not going to solve it all today. We're not going to solve it all with this bill. The thing I'm worried about is if we pass this bill, you know, let's don't just say, well, we took care of roads funding, because we didn't. [LB846]

SENATOR AGUILAR: Time. [LB846]

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SENATOR GAY: Thank you, Mr. President. [LB846]

SENATOR AGUILAR: Thank you, Senator Gay. Senator Kruse, you are next and recognized. [LB846]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the bill and commend Senator Fischer for the creativity and the energy it takes to bring it forward. Roads have had a priority for a long time in this state, and I understand that priority, and I'm speaking for the state. I want to make clear that Omaha's interest in four-lane roads in Norfolk is a genuine interest. The priority on roads needs to be restored. For many years I drove 30,000 to 40,000 miles a year on the roads of Nebraska. I have traveled every highway in this state. They are an important resource for all of us, and I would strongly express a disagreement with anybody who says, well, they're not going to make that much difference. They make a lot of difference. I lived in Norfolk, covering a district from South Sioux to Atkinson. I needed roads. I was on those roads every night, and many times it was a gravel road. But the condition of those roads affected how much we moved back and forth with each other. The roads spread an economic development emphasis or a part for all of us. Businesses look for access, and again, I'm supporting access for any community that can get four lane, which is the true access, if you're trying to bring in a business. I have grumped for eight years--and you can see how much my grumps count because you'll quickly recognize I've been unsuccessful--but I've grumped for eight years that we don't have an exit ramp at the Arch in Kearney. It's ridiculous. It's outrageous. It would cost \$1 million. I got that price from the exit ramp that takes...at a rest stop. It would bring in...have brought in during this time zillions of dollars. It would have helped us in all kinds of economic ways, and I find incomprehensible the vagueness from Roads saying, well, we're not sure that we should be involved in economic development. Oh, my! My dad was roads supervisor in Howard County. I was pulled out on a rainy day to repair a bridge, because the merchants in town were complaining that the people from our section of the town were going to the next town, rather than coming to see them. Roads are an important part of our development. I do disagree with the bill in a change in the split, because that could reduce the dollars for counties and towns. Counties and towns have a clear responsibility there, but I see that there will be an option to talk about that further, so I'll not do that here. Again, I stand to support the bill and to declare that roads are a priority for us, and we need to find our way through to state that priority in a way that makes sense, and we need to have dialogues that prioritize the use of the funds, because there are not enough funds to do everything we want. Thank you. [LB846]

SENATOR AGUILAR: Thank you, Senator Kruse. Senator Adams, you're next and recognized. [LB846]

SENATOR ADAMS: Thank you, Mr. President, fellow senators. I also stand in support of LB846, and I want to take just a moment. I agree with Senator Chambers. Nebraska's

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population remains relatively stagnant. If there's movement, it's from west to east. I don't know that if you took off and built a concrete ribbon out to some part of the state that we could anticipate that the town would grow at the end of that ribbon or any town along it might necessarily grow. But you know what? Transportation in Nebraska, our transportation infrastructure, is part of our history. Now that history may very well have been merely people passing through the state. Whether it was on horseback or wagon or rail or interstate, it was probably to get from one end of here to the other. And our economy has spun off from that, whether it was Peter Sarpy's trading post, or an Omaha, or a Scottsbluff. And we can't ignore that reality. So maybe we don't go build roads off to nowhere and hope that a town grows or reverses its negative population trend, but at minimum, at minimum, what we have to do is to maintain what we've got and finish what we have started. And maintaining what we have is obvious, and finishing what we started. Those things are there as conduits. Conduits to Canada maybe. Conduits to Colorado. But they have been part of the lifeblood of Nebraska's economy. Senator Fischer, she takes credit for putting this together, and has from a lot of senators. I want to add to that. We did a lot of talking last year about what we're going to do about roads. She has done something. Is it a silver bullet that's going to solve the problem? No, but it is a beginning point. And I think to do nothing is not an option and to do nothing ignores our history in this state. Thank you, Mr. President. [LB846]

#### SENATOR FRIEND PRESIDING

SENATOR FRIEND: Thank you, Senator Adams. Members, we are discussing AM2355 to the Revenue Committee amendments. Senator Flood, you are recognized. [LB846]

SPEAKER FLOOD: Thank you, Mr. President, members. Senator Chambers is right. This is an interesting bill, and you've got to have both bacon and eggs to grow a community. We fortunately have that in Norfolk. We have retail sales approaching \$500 million. We have major industries like the state's only steel mill. We have seen unprecedented growth off of the interstate for years. But the chicken is sick and might not lay any more eggs if we don't attract more business. So in essence, he's right. If you want to walk away from road projects outside of the two metro areas, ignore the fact that industries are looking for infrastructure, safety for their drivers and what they transport, we won't see the economic development. People don't live where they want to...people don't live somewhere because they've got a nice road. He's right on that. They live where they can get a job, their kids live where they can get a job, they live where there's an opportunity, access to the airport, safe roads, and where the businesses show up, the amenities show up, and the retail shows up, and you build a community. And that's what sustains, economically, portions of, you know, Norfolk in my district, Columbus in Senator Stuthman's district. Beyond the economic development argument, the second one--and I think it's just as important--is safety. We want safe roads. Have you ever driven from Omaha to Norfolk during harvest time, and there's tractors and combines on the road, and you're trying to get around those farmers'

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implements and there's oncoming traffic? It's not safe, given the amount of traffic, close to 6,000-plus cars a day on portions of 275. And if it's only about traffic count, then let's pack up and go home. If it's only about traffic count, why do we spend any money outside of Omaha and Lincoln? If it's only about traffic count, maybe we're predestined for a result that nobody wants to talk about. Maybe that's what Senator Chambers was bringing up. But I represent 35,000 people that think access to transportation is pretty important, and I represent 35,000 people that want to live in the area that they do, and I represent, like all of you, 35,000 people that want to see their area grow. And we don't want to take anything away from Omaha, and we don't want to take anything away from Lincoln. There's going to be no attempt by me to try and earmark any money for my special road. I'll celebrate the Lincoln south beltway or a loop around Omaha or Scottsbluff linked to I-80, just like I would Schuyler to Fremont, or Norfolk to Winslow. I don't want political roads, but I want progress, and I'm willing to vote and have the courage to vote for this bill, to demonstrate my willingness to find a solution. And I don't want to take money out of somebody else's pocket--I want to get more money in the pot so that we can complete more projects statewide. And at the end of the day, it's about safety and economic development, and growing every corner of the state, because if you don't have a strong Norfolk someday, and all we have at the end of 50 years is a strong Omaha and Lincoln, you've got bigger problems, because you've got big bills coming your way from the people I represent. If we don't have the growth and the opportunities that you have down here, we're concerned, and you should be, too. Help us grow, help Scottsbluff grow,... [LB846]

SENATOR FRIEND: One minute. [LB846]

SPEAKER FLOOD: ...help all the communities across the state that are connected to some of these larger hubs grow. It's that important. Thank you, Mr. President. [LB846]

SENATOR FRIEND: Thank you, Senator Flood. Members wishing to speak are Senators Fulton, Johnson, Erdman, Carlson, Chambers, Loudon, and others. Senator Fulton, you're recognized. [LB846]

SENATOR FULTON: Thank you, Mr. President. I'd like to start by saying thank you to Senator Fischer. I did work on this over the summer. This is a very complex issue. There aren't a whole lot of easy or popular answers or solutions. Senator Fischer, true to her word, has come forward with an idea, and that idea takes the form of LB846, so I thank her for that. I am opposed to LB846, however, and I'm not opposed to it simply because it would increase the price of gas at the pump. There's a little bit...I go a little bit deeper. I'd like to explain that to you, and that's why I'm even talking on this. I'd be content to vote and hold my remarks back, but I'd like to give an avenue or a perspective that probably isn't being considered, and that's part of my responsibility, I think. Presently, we are at about...well, I take that back. In 2010, we're going to be somewhere around \$190 million short on what our roads budget would need to be. It's

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quite a bit of money. How have we got into this mess? Many of you probably understand this, but it's worth pointing out that the inflationary pressures on the materials that are used to build roads have increased dramatically--10 to 15 percent. In recent years, even more than that. So if you could picture in your mind a graph. On the one hand, the cost to build roads is increasing upward and to your right. On the other hand, the amount of revenue that we've been taking in due to our gas tax, our primary funding mechanism for roads, has flattened, and in fact may be declining. That being the case, it seems to me that going forward, both of those trends are going to continue. The cost to build the road is going to continue to proliferate upward, and the amount of revenue that we can collect through gasoline, the gasoline tax, if we could trend it upward at all I think it would be minimal. So I look at that and say, long term, we have to do something more than just the gas tax. That was a decision or a conclusion that I arrived at sometime in the course of digging into this last year, that mathematically it's just not possible going forward to expect that the gas tax, first of all, could be increased to match the \$190 million shortfall that we will have in 2010, and secondly, we can't expect to go back and revisit that gas tax to increase it 10 to 15 percent every year, here on out. It's just not...it would be bad policy, and frankly, it wouldn't work politically. So that being the case, there should be some other way. Now I proposed another way, and it may not be the best idea, but it's one idea. I think we run the risk, or at least this is why I'm voting...I won't vote for LB846. One of the reasons why is because I think we run the risk of addressing this, this year, and then taking three or four years off, saying well, we got at that problem last year, didn't we? We increased the gas tax. And that's a concern, because I think that would set us back even further than what we are now. So putting forward this idea that we're not going to be able to address this through the gas tax, there could be two ways to look at it. The way I'm choosing to look at is, we need to put the stakes in the ground now and create a situation where we create urgency, so that we find some other mechanism, some other way to pay for roads. That's the position I'm taking. Another position, admittedly, could be taken that, well, you're saying that there's a problem; we could at least address some of the problem by passing LB846, and I grant that's a logical response or a logical position. I just am not taking that position. [LB846]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR FULTON: So I hope as we go forward with this we recognize, and I'll echo what Senator Gay said here, that any fix that we provide this year is a very small fix compared to the gaping wide hole that we face in the coming years. And again, I did come up with some other ideas. It's not appropriate to address those ideas here now, but one I want to bring forward is a performance audit, which I would like to see done on the department. That certainly would help our cause. If we're going to put more money into building roads, then it would be legitimate, I think, to say that monies that are being

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spent now are spent appropriately. I'll stop with that. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fulton. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR281. Senator Johnson, you are recognized. [LB846 LR281]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. I want to continue where I was the last time, because I think this is extremely important. One of the things: If we fail to grow this state in the areas other than the metro area, what we will have is a decline of these areas--it's guaranteed. I am fortunate to be on the interstate. I'm on the Oregon Trail and it does make a huge difference. In fact, if you look at Nebraska, if you're on the interstate, you're in pretty good shape. Off the interstate, by and large you're going to tend to struggle. One of the results of this is this, is that we're going to have an increase in our aging population in the nonmetro areas. In this last weekend of USA Today there is a beautiful map that shows much of this illustration of the counties throughout the state of Nebraska. I would recommend that you look at it. Now here, I think, are some of the things that are important. First of all,--and Senator Chambers again is exactly right--we need to develop a priority system for roads that will grow this state in an efficient manner. We cannot go on the way we have been, of building roads by who has access to a politician who can get them some money. Since the beginning of time, roads have been built for two purposes: trade or economic development, and the military. Those are the two reasons. Yet in Nebraska there is very little evidence as to the relative economic value for our suggested road projects. I don't think that the Roads Department knows what economic development is. Economic development must be part of the priority system for building these roads. Furthermore, many projects have been done, one mile here, one mile there, and no continuity that results in a complete project which would give economic development to that area. Can we begin to calculate the value of completing the expressway between Columbus and Fremont, rather than the piecemeal construction on so many of this area's roads. Basically, the expressway system that has been built is a hub-and-spoke system to Omaha and Lincoln. This is as it should have been done, but we now need to expand the expressway system but do it in a logical, prioritized manner. In the long term, the nonmetro expressway system is a must for both the metro and nonmetro areas. The metro area will continue to do well, and they are already paying two-thirds of the state's taxes. In the meantime, select nonmetro areas continue to struggle, and the great potential... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR JOHNSON: ...for this area never occurs. Soon the nonmetro areas will be the poor stepchild. Can you imagine Omaha getting along with a 1940 designed road? Frankly, Norfolk does. Growth requires investment. We cannot be afraid to do otherwise. The grandest generation earned its reputation by working to improve for the next generation. I think it is up to us in this One Hundredth Session of the Legislature to

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look to the future and do what is right for the next generation. Thank you, sir. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Erdman, you are recognized. [LB846]

SENATOR ERDMAN: Mr. President, members of the Legislature, I had made a promise to Senator Fischer that I would try to stay quiet and listen to the conversation, but I did share with her that I was going to at least speak one time and correct at least one thing that I heard. There are parts of the state, especially rural Nebraska, where people want to live. The assumption or the insinuation that that's not true is probably more of a reflection of some limited areas, but I will tell you that there are communities and areas of my district where there is substantial growth, and in fact, in one county alone there are more jobs, more good quality, high-paying jobs in that one county than there are actually residents of that city. And in order for that city to continue to provide the employment opportunities, people come to that community from all over the Panhandle and other places like Wyoming and Colorado. So not everybody is trying to get out of their community that they live in to go somewhere else to find employment. At the same point, we have a lot of opportunities in agriculture in Nebraska, and depending upon how we decide to set the policy in there, that may continue to enhance that. I wanted to take that minor point. But let me talk to you about where the battle is on this bill. We can talk all day, as I have said before, on the budget. We can talk all day long, all night long, for the rest of this legislative session, on LB846, and it doesn't do a thing unless you pass the A bill. You're not doing all these fantastic things that the greatest generation will be proud of us, as Senator Johnson is telling us, because there's no more money for roads without the A bill. Senator Christensen brought up an interesting scenario, and that is that without this mechanism, without this bill, there's no other way to fund roads, and if you do fund roads it has to come out of the General Fund, and that can be zeroed out at any time during a budget. Guess what? The variable tax that is in our law is based on the appropriation of funds. The gas tax is based on what we say the fund will generate, what will be spent, and if there's not enough money, the tax fluctuates to fulfill that, and when they evaluate that every six months, they reevaluate what they think the projections will be, and that's why you're \$14.5 million short. It wasn't because of the mechanism; it was because of the appropriation. If Senator Fischer's bill passes without the A bill, you collect the same amount of money. You just do it differently. So you very easily can vote for LB846 to change the mechanism; to try to put in place the process that Senator Fischer has outlined is more appropriate, or she believes, is more responsive to the society that we're in today. But unless you pass her A bill, you don't raise the gas tax. You just collect the gas tax from a different source, and you lower the fixed amount from 10.5 cents to 2.5 cents, and you collect the difference from the 5 percent wholesale tax that is collected from the wholesalers. So the battle isn't over this bill; it's over the A bill. The irony is, is that either under LB959, which is the budget bill this year, or any other future budget bill, you can zero out the funding for the Department of Roads. [LB846 LB959]

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PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: And I will stand to be corrected, but as I understand it, that variable tax comes to the state. The counties and cities will still get theirs. So you go through this whole process, and we're all excited to be a part of the solution, and I'm not saying this isn't it. But let's understand what the solution is and how it works. And I'm not sure I'm completely there yet, but I do know this: that unless you pass the A bill with LB846, there's no more money for building roads in the state of Nebraska this year, other than what the budget has for our gas tax increase of \$14.5 million, and that's not to build roads--that's to fund salaries. But if you don't fund that, you take it from roads to fund salaries. We've already had that conversation. So remember, the battle here, the main discussion will be on the A bill. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Carlson, you are recognized. [LB846]

SENATOR CARLSON: Mr. President and members of the Legislature, it's interesting to listen to the various testimony concerning this bill, and I do stand in support of LB846 and the amendments mentioned thus far. It is a fact that these days in Nebraska we are using less fuel than in years past. Why? We're all interested in mileage. We have hybrids that use less fuel. We have the potential for electric cars that use no fuel, that would be taxed. We operate on the basis of a user fee, which I think is the right way to go. We use no General Funds. Where I would...I'm not disagreeing with Senator Fischer, but recognize that people who don't drive and people who don't travel still depend on roads. You don't have to leave your town, you don't have to leave the city limits, but you depend on people bringing goods to you. Everybody in the state uses roads, one way or another, and yet we use no funds from the General Fund, and I think that that's still a good path in which to go. In the past year, whenever I've spoken to a group, I've tried to ask the question, what do we do about roads, and explain a little bit what the situation is, as I see it. We've got declining revenues. What do we do? What is your answer? What is your solution? I don't hear any. When we talk about raising taxes on fuel, on gasoline, I really don't hear very much opposition to that, either. But I don't hear a good plan for another source of dollars. We think about...and I've heard the statement, this is not a good time to increase taxes. When is there a good time to increase taxes? When things are going well and we've got all kinds of revenue, we would say, we've got all kinds of revenue because their taxes are low. Why would we raise taxes? When revenue projections go down, we don't want to raise taxes because it's a bad time. There never is a good time, but we've got to deal with the situation that we have, and we need to remind ourselves this circumstance is true in the states all around us. It's not just Nebraska. We're not dealing with this by ourselves. Members of the Legislature, I think there's a multiple, multiple, multiple vehicle pileup waiting to happen, and we've got to address the issue. I think Senator Fischer's bill is a start in the

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right direction. I appreciate what Senator Johnson has said, and I appreciate what he's tried to initiate in his time in the Legislature, and it hasn't happened yet. I hope it does. I hope someday there's a Snowbird Trail across Nebraska. That would bring great economic development to the rural area. I'm not opposed to the Heartland Express. I hope that can be completed. Senator Chambers said people are leaving rural Nebraska. Well, we want more people in rural Nebraska. Let's do something about this, and thanks to you, LB609 is ready for Final Reading, and that will be a step in the right direction. I appreciate your support. People want to move to rural Nebraska. Why would people want to move any place? The biggest factor is community. [LB846 LB609]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CARLSON: What is community? Community is a safe place. Community has good schools. Community has good churches. Community has either good medical facilities or good access to medical facilities. Community has ample recreation opportunities. Community has good people who care for one another. Community has opportunity. We have a great state in which we live. We want to make it better, we want to take bold steps to help us get there, and LB846 is a step in that direction. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Chambers, you are recognized. [LB846]

SENATOR CHAMBERS: Mr. President, members of the Legislature, my good friend Senator Wightman continues to talk about the miniscule increase in the gas tax, based on what people pay for other things. Other things are more needed than gas. You put gallons and gallons of gas into your car all the time. I know. It's like that basket example I always give, where you have two rows of people stretching 20 miles, and they face each other, and one person is given a large wicker basket that weighs nothing when he starts out. And every person just throws one grain of sand into the wicker basket, and as the miles begin to be traversed, that basket becomes heavier and heavier. Then Senator Wightman says, well, one more grain won't hurt, and he throws it in. The man collapses, the basket falls and crushes him. It's a cumulative thing. If all that you had to pay, all you had to spend, and you're poor, is what you spend on the gas tax, that's fine. If you would look at the automobile tax statement that you get in Omaha, you see the bites that are taken by all of these different taxing entities, and when you add it all up, it comes to a sizeable amount of money, and some people have trouble paying it, believe it or not. You all are doing all right, so you reckon that everybody is doing as well as you're doing. The bogus arguments that were given to build the interstate are being given here today. The only way they could get these fools in America to agree to fund out of federal money an interstate system, going through states where you don't need these highways, but you wanted one to go across the country, was to call it something like the national system of interstate and defense highways. You were going to move

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military personnel and equipment on those highways. First of all, when you look at the type of equipment that would be carried on a vehicle, some of the equipment would be too heavy for the highways, the way they were constructed. When you talked about missiles and other weaponry that would be on those flatbed vehicles, the overpasses were too low for them to pass under. But Americans are so dumb that they swallow everything they're told, and you think they're going to swallow it now. Senator Johnson, there was a British writer named Samuel Johnson, they called him Dr. Johnson. Well, if Senator Johnson, our Senator Johnson, our Dr. Johnson, were to think of a literary piece, it could be The Rime of the Ancient Mariner, where the albatross was hung around this man's neck. This man killed the albatross. That was a bad thing to do if you're a sea. Senator Johnson talked about future generations. You're hanging an albatross around their necks by this irresponsible, ad hoc constructing of roads, when you ought to have a road building moratorium. You're not hearing me, but I'm going to say it over and over anyway. That's what's needed. You cannot maintain the roads right now that you have. You cannot maintain them, and you are not maintaining them. And you talk about building. All of the defense of this bill has a noticeable and detectable western twang to it, hasn't it? Like "I got tears in my ears from lying on my back, on my bed whilst I cry over you." That's what we're hearing here today. Westerners want this bill because it's for them. Senator Flood has said it takes courage to vote for this bill. Not for those of you out west! It's for you. That doesn't take courage. Where are most... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CHAMBERS: ...of the people who are going to pay gas taxes located? Not where you all live. Not where you all live. So when you raise these taxes, you're raising them on people who are not going to be using those roads that you all want in your area, so keep that in mind. You're not being altruistic. I won't be here to say I told you so, but you're going to have to confront that. This is irresponsible because you have no plan, and you won't have a plan. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Members wishing to speak are Senator Louden, followed by Senator Hansen, Senator Pankonin, Senator Gay, and others. Senator Louden, you are recognized. [LB846]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. As Senator Chambers mentioned that you're building new roads, and my understanding is the problem isn't new roads, it's more or less improving the ones we have, because the Department of Roads has a rule now that they will not increase the mileage to zero. In other words, if there's a road out there that they have to take over, they got to dump one back off on the county some place, and that's been in effect for several years, because we've done that out in the western part of the state on some of those roads that were cutoffs and that sort of thing, that they've changed the road. So it isn't a matter of

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building new roads; it's a matter of improving the ones we have. And part of that problem that I have is your six-lane interstate from Omaha to Lincoln. There's some of that I question whether it's necessary, because that's probably some of the highest road-building projects that you can possibly have, because every bridge you come to has to be tore down and built over again, and every one of those you drive under, it's at least \$3 million and on up. And in fact, the interchange out here on what, 56th Street, wherever it is, is probably something like a \$26 million project. But that's neither here nor there. This bill is all about raising money to fund the Department of Roads. The Department of Roads isn't exactly that short on funds. The reason they're short on funds is because some of the government funds aren't available or going to be available that they ordinarily use. Most of your interstate building and some of that is the reason they're doing that, is because they have an 80/20 mix and they're using federal funds, and that's going to run out so they're going to have to find some other funding to continue this interstate building, is my observation. So therein lies the fact that other parts of the state will suffer, where they don't get an 80/20 mix from the federal government. So I think part of the deal is we have to be concerned on how the Department of Roads uses the money they have. Now I haven't been able yet to figure out why I should support LB846, because the system we now have in place has worked fine if it isn't tinkered with politically. This won't make any difference. If this raises any more money, it's because you raised the taxes--simple as that. There's no way that you're going to get more money unless you raise a tax someplace. I don't care what you put it on or whatever it is, if you have state government and you need more money for something, you're going to be raising the taxes someplace. Now do you do it on a user fee, or do you come up with a different item? Now what we're doing with LB846 is probably putting a COLA, sort of what you would call a cost of living increase or adjustment on it, by having it as a user fee at 5 percent on the wholesale price. Wholesale price goes up, why, you can...the taxes will go up and nobody has to take the blame for raising the gas tax or the fuel tax. The way it's set up now, why, we have a system and it's up to the Department of Roads to signify how much money they will probably need in the following year, and when they do that, their projections are supposed to come in on what they need, and then therefore then the projections come in on what the taxes will be to raise that amount of money. Now if you start playing around with it and decide you don't want to raise the gas tax, and you figure it backwards that way, that we want to keep the gas tax where it is now, so they have the Department of Roads figure out what their money or their budget will need to fill that amount of money that the tax, if you don't raise the tax, and therein was the problem. They did it that way... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR LOUDEN: ...because they were projecting that there was going to be less fuel used, so there would be less gas tax. The way it was, people did not quit driving as much, there still was more gas tax, there was more sales tax on automobiles that they

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planned on, and consequently, they came up with too much money and had to drop the gas tax four cents. Now when you do that, every cent a gallon you have is about \$12 million a year; in other words, \$1 million a month. So out of that four cents you dropped, that was about \$4 million a month that...do we say we left the money on the table, or do we say we saved the consumers \$4 million a month. Now did anybody notice? Probably not. But when you figure it up from January through March now, what are we talking about? Twelve million dollars that there was a chance that they could have raised that revenue, if they so desired, if they hadn't tinkered with the system. So really, I think the way the system is now, I think it's probably satisfactory. I just think you got to have the intestinal fortitude not to play with it politically. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Hansen, you are recognized. [LB846]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I do also want to thank Senator Fischer for bringing this idea to the floor and through the committee process. We need to do something for roads, that's for sure, but I'm not sure this is exactly the right way we want to do it. Nebraska is a high-tax state. How many times do we hear that over and over and over? And then we stand here today talking about raising the tax at the pump on gasoline and diesel fuel. It's a high state tax...a high-tax state, ladies and gentlemen, and we need to keep that in mind. I think that if the Roads Department is low on funds at the present rate, and what Senator Louden said just a moment ago was exactly true, that maybe we shouldn't have lowered that, the gas tax last January, but we did, so we're short of funds even more than we probably should be. According to Senator Gay's sheet, the maintenance budget for the state of Nebraska is around \$210 million. The budget for the Roads Department is in excess of that. I don't know how the Roads Department spends their money. I'm not on that committee. I'm not a member of the road commission, of course, but Easter Sunday, last Sunday, I came back to Lincoln about 4:00 in the afternoon, on a Sunday. There was a road crew working on the interstate. So finally I got ahold of my district engineer and I said, Gary, why are these people out there working on a Sunday? He said, well, it's a contract crew; they call it a short contract; they had so much time to get that project done. I didn't ask him what they were paying that crew on a Sunday afternoon to be patching on the interstate and to have one lane of traffic closed down, but I'm sure it was...that contractor was getting well-paid. I don't know, I don't know the ins and outs of the road budget, that's for sure. We need well-maintained roads in the state. I agree with Senator Chambers that no more...that new roads aren't going to bring anybody else to the state. We need to do comprehensive tax policy change. Rather than raising taxes, we need to figure out a way to lower taxes. The...in western Nebraska, we talk about we have low population. I'm not sure we have the low population that everybody is worried about. I think maybe we're reaching an optimum population. An optimum population can get by because we have better machinery in agriculture, we have better management, and we have better roads. We have much better roads than we did when

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I was learning to drive on those state roads that were still gravel roads. But we have safe roads and we have well-maintained roads and that allows us, at least in agriculture, to continue going along and growing our agricultural production and our ag businesses because we have good roads, and we need those roads maintained. I'm not sure we need any new roads, but we certainly have to have them well-maintained. Senator Chambers was talking the other day about driving back and forth to Omaha, and I've done that a couple of times, not near as much as you folks who live up there, but he was saying you get the swaying of the interstate and you get sleepy. Well, we have built-in safety methods in our roads, Senator Chambers. We...especially if you get past Grand Island we have these built-in things in the road that will keep your head bouncing, and when your head bounces you can't go to sleep. And then every time you get up close to a bridge, you got to hold on with both hands because you know you're going to go airborne for just a little bit of time. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR HANSEN: Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Pankonin, you are recognized. [LB846]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I want to also echo the comments about Senator Fischer's work on this bill. As always, she takes a serious approach, does the work, and started this summer on this innovative plan. Unfortunately, for me it's a very big dilemma because my district would probably benefit greatly over time if this is passed because the expressway section in my district has the highest traffic count and could be one of the first projects that would get done, and it is needed. The traffic there is heavy. But on the other hand, my district may well have the most commuters in the state of over 20 miles one way. We have a lot of people that drive to Omaha, up through the corridor, Plattsmouth through Bellevue on Highway 50, that I take coming south just a little bit every morning to come down; and then a lot of people from the western part of my district commute to the Lincoln area for employment of all kinds. And I've joined that group over the last couple years and know what it takes, both for the time but also the tremendous expense and how much it's gone up since I started in the Legislature last year. In the short run, this year I am not in favor of this bill. Many of our citizens are hard-pressed to pay more, and I want to give you an example just from this morning on the WOWT telecast this morning as I was having my piece of toast before I drove down. Gasoline in Omaha, they said, went up 15 cents yesterday. They calculated, Senator Wightman, that that's, on an average tankful, \$3 a tank, just the change from yesterday till today or in the Omaha area over the last couple of days. And for a lot of people, if it's \$3 more a tank than what it's been here just shortly, that's a tremendous financial cross to bear, so to speak, because they're already hard-pressed to pay what these fuels have gone up over the last couple years. So we're adding a tax

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at an all-time high. The other thing I want to mention is that the Governor has been, at best, neutral on this issue. He isn't supportive. I've talked to him directly about it and, you know, I think from several aspects that that can be a problem for this bill, and I think his stance is to wait a year at least and see what happens on several fronts. In the long run, as it's been mentioned, gas tax is going to be a problem anyway. In ten years, we will see the changes in technology. I think this automotive technology, as it moves ahead, will come into the fore quicker than we may think and we're going to have to raise funds in a different manner, as Senator Fulton has stated today, and that we've got some problems anyway in how this is funded. I have on several occasions told Senator Fischer I cannot support this bill at this time. Roads are important and it's been stated by many folks why they are, but many of our citizens are struggling to pay for fuels right now. They need to commute to work. This is not the time to pile on additional taxes that will very likely cause a lot of hardships for Nebraska families. I guess that's why people are saying it takes courage to vote this bill, because from listening to the testimony today it sounds like it takes courage to talk against it, because that's maybe the consensus. But I think it would take courage, Senator Flood, to stand at the gas pumps and tell Nebraska citizens that the Legislature, at this time of record high fuel prices, has raised the taxes some more. I think we should wait. I know we can't wait forever and I think infrastructure is important, but it's not the right time. Thank you.  
[LB846]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Members wishing to speak on AM2355 is Senator Gay, followed by Senator Nantkes, Senator Janssen, Senator Harms, Senator Chambers, and Senator Stuthman. Senator Gay, you are recognized.  
[LB846]

SENATOR GAY: Thank you, Mr. President. Senator Pankonin brought up some very good points and some of the same points that go through my head as you look at a bill like this, and it sounds like it's going pretty well, quite honestly. But he talked about some of the...I handed out the Nebraska expressway system of what we have to complete. This was, by the way, that they started 10, 20-some years ago, still uncompleted. I would agree with him; I'd stand to benefit from this too. I don't think...I disagree with Senator Chambers a little bit. I think that some of this money, if we prioritize this, which I'm a little worried where the money goes here, but if we prioritize it, that would benefit the...it would be from Nebraska City to Bellevue would be one of the top priorities under this. And if you look at the expressway system, I wonder how we do prioritize that. You know, these are questions I think we need to ask ourself. I've been...I knew we were going to have this discussion this year, obviously, because people were introducing their bills, so I started saving my receipts at the pump. Just like you, you know, I drive an awful lot, and Senator Chambers, I pass him on the interstate quite a bit. But every time I kept my receipt to see where we're at. He's going the speed limit, so...but, you know, we went from a high of \$3.09 when...January 8, when I first put it in, it went down to \$2.74, up to \$3.14, and the last time it was \$3.04, and spent about \$535

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in gas so far. But anyway, as that thing jumps around, that's exactly why we do need this, this bill, I think. Remember, the bill...you're just changing the mechanism, the way I'm understanding this bill. We still have to go fund the variable portion and it has to be funded, so we're just changing the mechanism on this of how we're going to get revenue into the future. But again, I want to get back to the point of the bigger picture here. If we're looking at this, and I showed you the shortfalls are \$192 million, and that's just 70 percent of the needs, so we're not even going to get 100 percent of what the wants are, but a maintenance program alone is \$210 million. Then we got the safety program, \$50 million. I'm not going to go through that whole thing again, but it's a lot. Some of the questions that we have to ask, Senator Fulton is correct, you know, are you going to go concrete, are you going to do asphalt overlays? What is...how do we do all this? I mean on some of these mechanisms we look at motor vehicle taxes cities and counties can levy. We have a bonding authority we don't use, but severance taxes, as I mentioned before. So some of these things I think we need to get a bigger picture. And Senator Fischer, as Chairman of the...Chairwoman of the Transportation Committee, I would encourage her maybe to look at a bigger picture here. If we're going to take this step and say how much courage we have, do we have courage to continue on the next year and the next year and the next year? Because if you don't do something more than this, you're going to have a bigger problem, because this is keeping up with inflation and this is a change. But what I'm wondering is legislators in the past, you know, have said we're going to build this expressway. We haven't quite done it. You're going to be coming back here next year and the following year and we'll see where the federal program leads us of how we're going to go forward on this. But, like I say, I'm going to vote for this measure and...as Senator Pankonin said, you know, you're kind of should I or shouldn't I. When is a good time to talk about gas tax? Well, the fact is we need to talk about it. We probably need to do something. But if we're going to make that choice, I think we should at least make knowledgeable decisions, as Senator Hansen discussed, you know, where is it going, how are we going to do this? So I think as we're having this discussion, it's a good discussion, let's keep focused on where we're going to go. And some of those prioritizations, you know, the methods we're using, is the department fully utilizing this money, these precious dollars that we're bringing in? And we're asking Nebraska's taxpayers to pay. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR GAY: You know, that is tough to do. And I want to know that that money is being spent wisely. I'm not so sure we've got that yet. And some of the needs just on the expressway system, what is the number one priority, how are we going to fund those dollars? Are we going to fund the whole expressway system would be a question. So some of these things I think we need to continue discussing into the future. It's not going to all be done today. I am going to support the bill today and listen to the other amendments as they come. But I think we need to continue to expand our views and make sure, if you're going to vote for this, let's don't forget the bigger picture down the

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road and other things you're going to be asked to do down the road. Otherwise, you're taking a hit in voting for taxes from your people and not spending it very wisely. So I just want to make sure we're going to keep focused on the bigger picture as we go along. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Nantkes, you're recognized. [LB846]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. And I'll tell you, no one can do it quite like the senior member when it comes to karaoke on the mike, but (singing) on the roads again, just can't wait to get back out on the roads again. Thank goodness we're back on this discussion. We had a chance to start it during the budget debate in terms of the gas tax and the Department of Roads' overall budget. And here, under the leadership of not the king of the roads but rather the queen of the roads, Senator Fischer, we have this exciting proposal in LB846. And I guess that a couple of points that I wanted to draw out in the debate here this morning or this afternoon was we've heard that there isn't a clear plan in relation to the need. And I just want to clear up that every year since 1988 the Nebraska Department of Roads updates their 20-year road construction plan, which is carefully based on safety, traffic volume, and pavement conditions. And what that report tells us is that, looking at what it would take to complete that 20-year plan, is approximately \$7.8 billion. We've spent countless hours in committee, in the Appropriations Committee process, hearing from a variety of senators about the real and demonstrated needs of a variety of different roads and infrastructure projects within their district, and knowing where we're at in terms of budget constraints and political will, we were unable to include any of those within our budget this year. And so I really think in terms of a long-range plan to try and address some of these well-demonstrated needs, LB846 is really the way to go, and it allows us an opportunity to do the right thing today and to do the right thing this year. It's, I think, probably not a beneficial strategy to wait and see, to wait and see what may come from the administration next year or down the pike, to wait and see what may or may not come from the federal government down the pike, to wait and see if other options that have been talked about, roads, would be good for Nebraska. You got some pretty finite options, folks, in terms of toll roads, which I think have serious questions as to governance and liabilities; bonding, which has not been the history or tradition of this state; and then, you know, taking a run at the cash reserve, which is something that I think we're all reluctant to see that kind of a dramatic shift in funding our infrastructure needs. So really, the mechanisms provided by LB846 I think are very important as we move forward and make difficult decisions and take a leadership position on these critical, critical issues that help to drive the economic development of this state, which many of you have spoken about very eloquently. One issue that I did want to touch upon briefly that hasn't been talked about a lot this afternoon is what else do these investments mean in terms of roads projects? And this is an issue that really hits home for me. The projects contemplated underneath these proposals quantify into good,

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quality jobs for many Nebraskans, and we're not talking about these kind of minimum wage jobs which, you know, families can't rely upon to meet their health insurance needs and increasing tuition for their children and otherwise. These are good paying jobs that benefit many Nebraska families and keep them in Nebraska, working and paying taxes and contributing to that sense of community that Senator Carlson spoke so very eloquently about. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR NANTKES: So I think the economic development issues are well established. I think that the infrastructure needs themselves have been well documented. But in terms of the jobs that build these roads, the people that build these roads, that's something else I want you to keep in mind as we move forward. The living, breathing people who really build this infrastructure and do hot and dirty and difficult jobs to do this kind of work on the front line is something else that in the greatest tradition of really a public works program that we're talking about here. So the good, quality jobs is something else that I wanted to bring up. And, again, thank you to Senator Fischer for her leadership. And thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Nantkes. Senator Janssen, you're recognized. [LB846]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. I'd like to talk a little bit about a small town in Dodge County that is now connected to the 275 expressway. That town had been stagnant in growth for about, I would say, 100 years. It was always around 900, something like that. It would go down a little bit, come up a little bit, but it's been that way for a long time. In Dodge County we have probably as good of infrastructure of roads as Douglas County. Not as many, but it's good road infrastructure. Highway 275 now has went by this small town. You have to have something to offer people. You have to have a good school system. You have to have a good business district. You have to have the medical needs taken care of in these small towns. This particular town has those things. When the expressway came by this small town, there was a developer that bought about 35 acres of land and he is starting to sell lots off of that. You can get on this expressway and be in Fremont in under 15 minutes. You can be at 18th and Douglas Street in Omaha in 45 minutes. It's due to the expressway. So that's why I think it is important, not only for the larger cities to have adequate roads, but for the rural areas also. With that, you're going to see some of these small towns all over the state grow if you have something to offer to families that want them to move into these areas. So this is one of the reasons why I'm going to support LB846, not that I want to pay higher fuel taxes. No, none of us want to do that. But if you want to keep a good roads system in this state, a large state, we've got lots of roads, why, you're going to have to...it's going to have to be funded some way and I think this is a first step. With that, I'll give you the rest of the time back to the Chair.

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Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Janssen. Senator Harms, you are recognized. [LB846]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of LB846 and its amendments that are on the board. We have a highway in western Nebraska, the expressway, that's been on the books to be completed for 20 years, and we have five miles that needs to be completed. And at this point, the Roads Department does not take into consideration economic development, and it's the key to our economic development. I've listened to Senator Chambers, you know, talk about whether this will work or won't work. It will work where we live and it will bring better paying jobs. We have an overpass that 18-wheelers cannot even go under if they have fairly high equipment that they're bringing through. So people that are shipping in or shipping out have to find a different way to get their product to wherever it's going to be sent to. So I guess what I'm saying to you because I think it's extremely important that we have the appropriate highways and that this is completed and it's taken care of and that we have the opportunity here to grow and develop our region. The key to all economic development is your infrastructure. If you don't have a strong infrastructure, whether it be roads, whether it be housing, whether it be hospitals, whether it be schools or colleges or whether it would pertain to communications, all of that is very important if they're going to relocate; if they're going to be in a community and help the community grow. So I would urge you to support LB846. I would also tell you that recently when there was a hearing in Senator Fischer's committee in regard to expressways and road funding, there were approximately 35-40 people that came from Scottsbluff, Gering, Kimball to testify, and that told me that there is a lot of concern about their future, and they also realized that they would have to raise the gas tax in order to meet their needs. And I would tell you that I believe that the majority of the people in our region would be thankful if that road is completed, would appreciate the fact that they have the opportunity to bring in manufacturing firms or bring in companies that are willing to ship back and forth to Denver or to Omaha or to Lincoln. For us, it is the key to economic development. For our region, it is the key to our future growth. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Harms. (Visitors introduced.) Senator Chambers, and this is your third time on AM2355. You are... [LB846]

SENATOR CHAMBERS: Thank you. And, Mr. President, I think with that little addendum, people gave a great sigh of relief, but this bill is still before us. Senator Flood had said the chickens are dying in Holdrege, and I could see that big chicken Claghorn in the cartoon saying, "The chickens are die...I say, boy, the chickens are dying in Holdrege." But what we're asking you to give them is not chicken feed. That's what you need to remember. We're not talking about chicken feed. And all that I got

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from what Senator Janssen said was when we talk about Dodge now, Senator Carlson, and they say get out of Dodge, you can get out faster by getting on Highway 275, and he'll tell you, partner, that's where you go. Notice Senator Janssen said how quick you could get from Dodge to somewhere else, from Dodge to Omaha but not from Omaha to Dodge? You're always using these roads to get away from those locations. And when Senator Flood has snookered these city slickers like Senator Ashford and Senator Pirsch and all, Friend, sitting around here not saying a word, he's going to send me a picture of himself in a Rolls-Royce, smiling, and his Rolls-Royce is going to be pushed and pulled by Senator Stuthman, Senator Wightman, Senator Carlson, because they can't afford any gas. It's too expensive. They'll be pushing and pulling. And in the city, where they're paying more of it, these kids...there was a song. This guy said, once upon a time...this little boy was saying, tell me a story, tell me a story, tell me a story and then I'll go to bed; tell me about the birds and bees, how do you make a chicken sneeze; tell me a story then I'll go to bed. The old man says, once upon a time, I remember long ago. The little boy says, don't go back in history, your memory is kind of slow. The man says, stop your noisy talking while I finish with my tale: Once upon... The little boy says, upon a what? He says, upon your back you'll get a swat. The little boy says, tell me about the fish you caught that's bigger than a whale. Well, there's going to be this situation where these little children are being told a story by an old graybeard. And the old man will say, see that, that's a car. They'll say, we know that, grandpa; we read about that in history books. He'll say, well, we used to actually drive those things. And the little kids will say, no. Yeah. And again it goes back to the cost of gas being such that they're relics. We know it's not likely to become that bad. I am exaggerating, I hope. But when you talk, as my good friend Senator Wightman does over and over, about the relatively small burden of this additional tax, it's like I think it was Minnie the Moocher who poured water on a drowning man, that's what Senator Wightman would do. But in a few days, we're not going to be having Minnie the Moocher. We're going to have Manny and Minnie the Moochers, as they mooch, sponge and leech off the lobbyists who are going to feed them. If those lobbyists would stop feeding you all, we wouldn't have to stay here late at night. And you ought to be too proud to let lobbyists feed you. I say, you ought to be too proud, Senator Stuthman, to let lobbyists feed you. What do you be thinking, every mouthful from the lobbyists? You're representing your constituents, eating off the lobbyists. You know what, I think it was, Orson Welles said? Ask not what you can do for your country; ask for lunch. That's the senators' mantra, and I'm thinking of a rhyme. But since I know this bill is on greased skids, and it's going to be passed, I'm not going to offer amendments. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CHAMBERS: I'm just going to use it for an opportunity to continue to say that there's an unwise program of road building in this state. It can be stated over and over again that this bill is just changing a methodology, but you are changing a methodology to get money for a purpose. What is the purpose? That's what you need to

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look at, but you only even want to talk about it. Building roads. Where will they be built and why? One of the happiest corporations, probably, is Hawkins. I see that truck...that equipment everywhere, all over where there's road building. So I believe Hawkins has a lot to do with what we're doing in these kind of matters when we don't care where the roads are built, just so they're built. Senator Louden was correct when he talked about some of the building going on between Omaha and Lincoln, but I'll leave it at that. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Members wishing to speak are Senator Stuthman, followed by Senator Hudkins and Senator Carlson. Senator Stuthman, you are recognized. [LB846]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. One of the things that I wanted to talk a little bit about today is I think, you know, we need to find a funding mechanism so that we can complete, you know, some of the roads that have been started. Because I think if we never had intentions to complete these roads, they should have never been started in the first place. And we have a lot of them on this expressway system that need to be completed: 4 or 5 miles here, 40 miles here, 10 miles here, 23 miles there, 24 miles at the next place. And I think we need to put in our mind that we need to get these roads complete. I think that's very important. If we do not have in mind that we want to complete them, like I said, they should have never been started. I'm not for building, you know, more new roads. I want to see the roads that we have maintained and completed that are in the plan. I think that's very important. That's why I support this. Maybe it's not enough. But I'm also concerned because I want to get some of the roads complete because...the road from Schuyler to Fremont, because I have a very good friend, Little Orphan Annie. Little Orphan Annie is coming to our house to stay to wash the cups and saucers and brush the crumbs away, and she could get to my home so much quicker if we could complete these expressways. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Hudkins, you are recognized. [LB846]

SENATOR HUDKINS: Thank you, Mr. President and members of the Legislature. I would like to ask Senator Fischer a question, if I might. [LB846]

PRESIDENT SHEEHY: Senator Fischer, would you yield to a question? [LB846]

SENATOR FISCHER: Yes. [LB846]

SENATOR HUDKINS: Senator Fischer, I've got a couple things to say first, and then I'll ask you the question. I have been involved for a number of years in trying to increase the funding of roads, and we all know that with the increase in costs of steel, of cement,

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of petroleum just to get the supplies and the people to the road maintenance or the new road site, the price of roads has just gone up. You add to that inflation. You add to that the repair parts on the trucks, on the cement spreaders, on the blacktop spreaders and all of the other necessary pieces of road-building equipment, it costs a lot of money. Now this is my question. In your committee statement, it says that the proceeds from this tax will be distributed 66 percent to the state with the remaining 34 percent evenly split between cities and counties, which results in a 17 percent split to each of those. Are you set in stone or how did you decide this particular distribution percentage?  
[LB846]

SENATOR FISCHER: Thank you, Senator Hudkins. That's an excellent question. It does differ, as I said in my opening, from the percentage distribution that we currently have and that will remain under the system we have now with the variable, the fixed tax, the two cents straight to the cities and counties. The system we have now is 46 and two-thirds percent to the counties and the cities, to be split evenly. That's 23 and a third each. The reason we did not carry that split into this new revenue source, the 5 percent tax on the wholesale price of gas, is because I felt that the state of Nebraska should have a larger percentage. I felt that we needed to have the state of Nebraska have a larger percentage because of the risk that the state takes during the appropriations process. We set the budget for the Department of Roads. If we do not increase the budget for the Department of Roads to take advantage of that 5 percent tax on wholesale, if we pass this bill, then the variable will decrease. Senator Erdman brought that up earlier. So when the...if the variable decreases, that is a loss then in revenue, it could be, for the Department of Roads. Also, I want this body, I want the Legislature to keep control over a state tax, and that's exactly what the gas tax is that we have now and that is what this 5 percent tax on the wholesale price of gas will be. It is a state tax. We share it with cities and counties, and I support sharing it with cities and counties. They have to remember it's a state tax and when we, if we do not keep to the way this is presented in the bill, with 34 percent going to cities and counties to split, that...I guess the way to explain it is that money... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR FISCHER: ...is going to be collected anyway. [LB846]

SENATOR HUDKINS: All right. Thank you, Senator Fischer. I appreciate that information. I have a little trouble with that distribution because in the distribution method that we have right now, the cities and the counties do get more. Lancaster County should be paving four to five miles of roads a year. They are down to half a mile. And if...with your formula of distribution, Lancaster County is going to get \$37,000. That doesn't allow for a whole lot of things to be done to roads. So I...that's the only problem I have. So maybe we'll talk about that later. Thank you, Mr. President. [LB846]

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PRESIDENT SHEEHY: Thank you, Senator Hudkins. Senator Carlson, followed by Senator Gay. Senator Carlson, you're recognized. [LB846]

SENATOR CARLSON: Mr. President and members of the Legislature, I don't know how much further discussion we're going to have on this bill, but I'm going to try to enjoy myself here for a couple minutes. I'd like to address a question to Senator Avery and... [LB846]

PRESIDENT SHEEHY: Senator Avery, would you yield? [LB846]

SENATOR AVERY: Yes, I will. [LB846]

SENATOR CARLSON: All right, Senator Avery. Senator Stuthman just talked a couple of minutes ago about wanting to see projects finished and I think he brings up a good point and I'm going to try and make that point here with you. You had a bill earlier that's still alive and that would provide for building an arena in the city of Lincoln. Is that correct? [LB846]

SENATOR AVERY: That is correct. [LB846]

SENATOR CARLSON: And I think that it's gone as far as it has for several reasons. Why do you think it's gone as far as it has? [LB846]

SENATOR AVERY: Because of the good judgment of my colleagues. (Laugh) [LB846]

SENATOR CARLSON: You may be right, but you presented that bill and you had diagrams and you had a plan and you had a goal and it was pretty well spelled out. Now you did that for a purpose, didn't you? [LB846]

SENATOR AVERY: Yes. [LB846]

SENATOR CARLSON: How far would your bill have gotten if you'd have introduced a bill that would have said that we're thinking about an arena some place in Lincoln; let's see what kind of funds this would generate and we'll make plans someplace along the way, possibly, for an arena? How far would your bill have gotten? [LB846]

SENATOR AVERY: Not very far, Senator. [LB846]

SENATOR CARLSON: No, it wouldn't have. Thank you, Senator Avery. Now I'd like to ask a question of Senator Fischer. [LB846]

PRESIDENT SHEEHY: Senator Fischer, would you yield? [LB846]

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SENATOR FISCHER: Certainly. [LB846]

SENATOR CARLSON: Now, Senator Fischer, I'm not even going to give you a chance to respond to what I just asked Senator Avery, because I've got something else for you. [LB846]

SENATOR FISCHER: As long as you're having fun, Senator Carlson. (Laughter) [LB846]

SENATOR CARLSON: January 2008 we reduced the price per gallon on gas tax, didn't we? [LB846]

SENATOR FISCHER: The price...the variable dropped, yes, so the pricing...or the gas tax dropped by four cents, January 1. [LB846]

SENATOR CARLSON: By four cents per gallon, that's correct, isn't it? [LB846]

SENATOR FISCHER: Correct. [LB846]

SENATOR CARLSON: Did the price go down at the pump? [LB846]

SENATOR FISCHER: I haven't found anyone who has said that they paid less at the pump. [LB846]

SENATOR CARLSON: Okay. I would agree with you. And I'm not trying to put you on a spot here, although I'm going to do it. But nobody can put you on a spot. [LB846]

SENATOR FISCHER: (Laugh) We'll see. [LB846]

SENATOR CARLSON: Okay. Why didn't the price go down? [LB846]

SENATOR FISCHER: Consumption was greater than was anticipated when we set the budget for the Department of Roads last year, and there was concern that the gas tax was going to go up. So we did not try to override the Governor's veto of the budget that we increased. [LB846]

SENATOR CARLSON: No, but you agreed with me that in January the price at the pump didn't go down for us. [LB846]

SENATOR FISCHER: Correct. [LB846]

SENATOR CARLSON: Why didn't it? [LB846]

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SENATOR FISCHER: Oh, why didn't the price at the pump go down even though the gas tax went down? There's a lot of factors that are involved in the price at the pump and that's why you see it varying. Monday, when I drove back to Lincoln from Valentine, I paid \$3.21 a gallon in Valentine. I filled up again in Grand Island and it was \$3.07. It depends on transportation costs that the stations have to carry it. It depends on competition. If you have a number of stations in an area, in a town or an area of a town, then... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR FISCHER: ...I would assume the price is lower. There's a lot of different factors that go into determining the price at the pump. [LB846]

SENATOR CARLSON: Okay. Thank you for your answer. And I would think really the reason it didn't go down is because it didn't have to. And so if we increase the price per gallon on taxes, I don't think it's going to change much at the pump because there's still competition and fuel has got to be sold. And that's one of the reasons I don't think that this approach is a negative approach. I don't think there's going to be much of a change. And I think we're about out of time, otherwise I would yield the balance to Senator Fischer. [LB846]

PRESIDENT SHEEHY: Fifteen seconds. Senator Fischer waives. Senator Gay, you are recognized. [LB846]

SENATOR GAY: Thank you, Mr. President. I...third and last time I'm talking on this. [LB846]

PRESIDENT SHEEHY: Correct. [LB846]

SENATOR GAY: It sounds like we're moving on. I have the surface transportation program book for 2008 through 2013 and beyond, and it goes by each district. And in District 2, which would be Dodge County, Washington, Douglas, Sarpy, and parts of Cass County, it lists all the different projects going on, the amount of money they're going to spend on each project, new construction, and resurfacing, those kind of things. Everybody's projects are in here and we talked about these ongoing needs. The question I'm wondering is at what point how they prioritize these needs and if we all understand that. I'd like to ask Senator Fischer if she'd yield to a few questions. [LB846]

PRESIDENT SHEEHY: Senator Fischer, would you yield to questions? [LB846]

SENATOR FISCHER: Certainly. [LB846]

SENATOR GAY: Thank you, Senator Fischer. Senator Fischer, you did a good job of

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explaining of how this...how your bill works and it has good support and I supported it again. I'm just making the points here of what's going to happen in the future, I hope. But when we look at all these projects in your district, they're not all guaranteed to be done unless we fund these programs, correct? [LB846]

SENATOR FISCHER: Currently, Senator Gay, we're in what's called a preservation program. There will be no new construction done in the state of Nebraska, except for the widening of the interstate between Lincoln and Omaha and one Missouri River bridge in Omaha. Otherwise, all of the funding for the Department of Roads will go for preservation of pavement and maintenance that needs to be done. [LB846]

SENATOR GAY: Thank you, Senator Fischer. And the point is...and then also I've...there's notices being sent out now that things are being delayed currently. Is that correct? [LB846]

SENATOR FISCHER: That would be correct, yes. [LB846]

SENATOR GAY: So everybody's district, on the different districts then, is the money that we raise and spend, is it spread out by each district or is it...how do they decide where the money is going to go in each district, whether it's District 1, District 2, District 3 through...how do they decide that? [LB846]

SENATOR FISCHER: There are eight districts in the state of Nebraska. It is...revenue is spread out across those eight districts. But, of course, the priorities are based upon safety, the pavement condition, and volume on traffic. I know that commissioners, there are eight commissioners, one for each district on the Highway Commission, and there's a district engineer in each district. The district engineer, of course, knows his area well, knows what priorities and what needs are out there, and especially dealing with safety issues. And so the district engineer consults with the commissioner and then decisions are made. The Highway Commission is an advisory group and they do advise the Department of Roads. The Department of Roads sets a one-year plan every year. I have a copy here for each district if you're interested in what's happening in your legislative district, but the Department of Roads comes up with a one-year plan and a five-year plan every year. The Department of Roads is a code agency and the Department of Roads does answer to the Governor of the state of Nebraska. Therefore, I would say the Governor, in consultation with his director of the Department of Roads, sets the priorities for the state of Nebraska. [LB846]

SENATOR GAY: Thank you, Senator Fischer. When we were with the county, we used to joke and say, well, your one- and six-year road plan is done in pencil because it changes so frequently,... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

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SENATOR GAY: ...as your funding goes and as priorities change. And that flexibility was good in a way, and bad in other ways. But we had discussed earlier and I would encourage you, as Chair, and I know you're looking into this, but I still want to make sure we look at the comprehensive approach to total funding for maximum growth in the coming years. And I say I support the bill, but I would encourage you, and I know you're interested in looking at a longer term solution. And this, as you mentioned many times, is just a beginning piece of the puzzle and we're going to have to work very hard to continue to fund the larger program in the future. So with that, thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Gay. Are there additional members wishing to speak on AM2355? Seeing none, Senator Fischer, you're recognized to close. [LB846]

SENATOR FISCHER: Thank you, Mr. President, and thank you, members. I think we've had an excellent discussion this afternoon. I appreciate all the comments, all the questions. This is a long-term challenge that we face in Nebraska, and I think all of you in here realize that we are not unique. Every state is facing this challenge. Every state is looking at how to fund their infrastructure. We all realize the importance of infrastructure to a state. We all realize that this truly is a responsibility of the state. And I appreciate that even those of you who say at this time you are questioning whether you can support this bill or not, you still admit that we have this challenge and we have to move forward. I would like to say that Senator Gay was asking about projects. There's a number of projects. And when I met with many of you to discuss this bill, I gave you a copy of the districts that your legislative district is in and the projects that will not be done. Senator Fulton, Senator Schimek, you're not going to see the Lincoln south beltway done; you're not going to see 148th Street and north to Highway 2. Senator Adams, you're not going to see Seward and South done. Senator Raikes, you're not going to see Lincoln East done. Senator Wallman, forget about Beatrice. Senator Langemeier, there's going to be no Wahoo bypass. Senator Hudkins, Agnew north and south, that's not going to happen. We have Senator Pahls, 156 Street/West Center Road in Omaha, it's not going to happen. Senator Pankonin, Plattsmouth to Bellevue, that will not happen. Senator Lathrop, Q Street, L Street in Omaha, that will not happen. Senator Lautenbaugh, North 36th in north Omaha and Blair south, that will not happen; Senator Kopplin, Gretna east; Senator Friend, Fort Street/Irvington, Fort Street bridge, those projects will not happen. Senator Friend will fix it himself. (Laughter) We'll talk costs later. Senator Dierks, Niobrara east and west; Senator Flood, Norfolk northeast; Senator Johnson, the Kearney east bypass; Senator Burling, Wood River west. I can go on and on. All of you have projects in your district, new projects that will not happen. As I said, this is not a challenge that Nebraska faces on its own. Every state faces this. We are lucky that we have not seen the complete deterioration of our infrastructure. We have not had a bridge collapse; that happened in Minnesota. The Minnesota Legislature

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this year passed a five-cent gas tax increase. Their Governor vetoed it, but the Legislature overrode the veto because they have constituents who are concerned about safety, who are concerned about economic development, who are concerned about moving and commerce. We happen to have two U.S. Senators who have been in the news lately. Senator Hagel and Senator Ben Nelson have both come up and stepped up to the plate, saying infrastructure is important to the United States... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR FISCHER: ...and the federal government needs to step up. Some of you have mentioned that we need to wait. I disagree, because President Bush announced and informed the Governor's Conference a couple weeks ago that there will be no money for transportation, there will be no federal dollars in his budget for transportation. Instead, there will be a cut. We're not seeing relief from the federal government. We are not seeing it from this administration. Representative Peter DeFazio, who is chair of the House highway subcommittee warns: We aren't even treading water; we aren't even maintaining a deteriorating infrastructure. We are deteriorating toward a third-world status, while our competitors around the world are leaping head with major investments in roads, bridges and highways while we fall behind. [LB846]

PRESIDENT SHEEHY: Time, Senator. [LB846]

SENATOR FISCHER: Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is on the adoption of AM2355 to AM1731. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of Senator Fischer's amendment to the committee amendments, Mr. President. [LB846]

PRESIDENT SHEEHY: AM2355 is adopted. Mr. Clerk, do you have an amendment to committee amendment? [LB846]

ASSISTANT CLERK: Senator Schimek would move to amend the committee amendments with AM2324. (Legislative Journal page 1046.) [LB846]

PRESIDENT SHEEHY: Senator Schimek, you're recognized to open on AM2324, amendment to committee amendment. [LB846]

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. This amendment strikes the statutory language pertaining to the use of seat belts and accomplishes what Senator Kruse hoped to do with LB812 this year, and that is to

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change the current seat belt law from a secondary offense to a primary offense. I want to make a point here with this amendment and I hope that you will just hang with me. This is a proposal that had a hearing in the Transportation Committee, but the bill was not advanced to the floor. The reason for enacting this change is quite simple, however. Obviously, we'd be saving lives. And I don't know if you all looked at your e-mail today but you should have all gotten something from AAA of Nebraska which gave some charts and statistics and said that it is estimated that we would have 17 lives saved in Nebraska if we passed this, and 293 fewer serious injuries. Obviously, we would be saving lives, but additionally there are federal funds available to states that enact this law. The federal government provides grants for states that enact primary safety belt use law for all passenger motor vehicles. I am told...we were told in the committee that this would be at least \$7.4 million and could be, according to AAA, as much as \$14 million for the state of Nebraska. In return for this money--and these are kind of incentive funds, I guess, that are available to the states over the next couple of years--in return, these funds are to be used for any project that corrects or improves a hazardous roadway location or feature or proactively addresses highway safety problems; for instance, intersection improvement, pavement and shoulder widening, installation of rumble strips and other warning devices, improving skid resistance, improvements for pedestrian or bicycle safety, railway highway crossing safety, traffic calming, etcetera. I'm not going to go through all of the different usages that we would be allowed for that money. But my point is that making this statutory change would allow the state to use other funds then that would be freed up from the department budget for these kinds of infrastructure improvements. They would be freed to match the money that is sitting in federal accounts that has actually been earmarked for Nebraska. And you got an article that was from the, I think World-Herald--yes, on March 11--that talked about the kinds of money that's sitting in accounts for Nebraska. And you will see that for Nebraska there's \$21.5 million earmarked for that western expressway. There's also another \$20 million for an eastern Nebraska expressway, and I'm not sure what that one is, if that's the beltway in Lincoln or what. And then several million dollars for an Interstate 80 interchange near Kearney. We would have to come up with a 20 percent match to get those federal funds, and I don't know when we plan on doing that, if we plan on doing that, but it seems to me that because the money can't be used for anything else, we ought to consider ways that we could access that money. You'll see later in the article it talks about other states that are using that. Particularly, South Dakota's section of the four-lane Heartland Expressway from Rapid City to the Nebraska border is slated for completion in 2011, thanks to the earmarks. Now I don't think we can necessarily force the department to take these earmarked funds because, obviously, they're going to have to come up with more than just the earmarked funds to complete any of these projects, but I wanted to call attention to it and say I think we're maybe missing an opportunity here to do some work on some of these projects. I guess, with that, Mr. President, I would like to simply say what the amendment would require would be that occupants in a vehicle driven by a teenager with a driving permit, to buckle up. They'd have to buckle up if they had a school permit, a learner's permit, provisional operator's

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permit. And it would require all front-seat occupants to buckle up when riding in a passenger vehicle. Now I know the seat belt wars have gone on for a long time. I don't expect that we'll adopt this here today, necessarily, but I think we should be thinking about it. And if we're going to eventually pass it, which I think we should, then we ought to consider doing it when we can get some federal incentives for it. And with that, Mr. President, how much time do I have left? [LB846 LB812]

PRESIDENT SHEEHY: Three minutes, 50 seconds. [LB846]

SENATOR SCHIMEK: I would like to give the rest of my time to Senator Kruse, if I might. [LB846]

PRESIDENT SHEEHY: Senator Kruse, you're yielded about 3 minutes, 45 seconds. [LB846]

SENATOR KRUSE: Thank you, Mr. Chairman and colleagues, and Senator Schimek. I do stand to support this amendment, which the dollar figures involved here, on a conservative basis, are \$10 million. And we have talked directly with the roads people, which aren't called roads on the national level, but with the people involved in dispensing this, and they indicate that our use of them is very, very flexible. We can use that for present things. We may shift around and pay out one fund and then another, but at any rate it's \$10 million extra for roads money. The issue is not whether one should buckle up. That's the present law. It is the law that everybody is to buckle up. The question is on enforcement of it--is it a primary or a secondary enforcement? And at the present it's a secondary enforcement. I've talked to troopers who tell me, again, concerned about profiling and so on, that tell me they now profile but it would be young people. They find an excuse to stop a car where they're not buckled up to explain to them that this is the best way they can...best thing they can do to save their lives, to live till you're 25. Teenagers need to buckle up. That's their emphasis and this would enhance that option and make it seem less of an option to teenagers, though again I emphasize it's the current law. It's not an option. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Thank you, Senator Schimek. You've heard the opening of AM2324, an amendment to committee amendment, AM1731. Members wishing to speak are Senator Erdman, followed by Senator Chambers and Senator Kruse. Senator Erdman, you are recognized. [LB846]

SENATOR ERDMAN: Mr. President and members of the Legislature, I was (laugh) joking with Senator Fischer that it wasn't going to be I who undercut her bill, it would be Senator Schimek with this amendment. I think this is an interesting discussion. I hope it continues on and I will probably surmise that if it's adopted it will probably do more damage to the bill than the bill potentially does on its own. I think if you recall or if my memory is correct on the purpose or the process in which the seat belt wars, as Senator

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Schimek pointed out, were arrived at and the cease fire that we currently have, it started out by the Legislature deciding, in our ability to do so, that it was going to be a primary offense, to which the people of the state of Nebraska promptly and swiftly said, no, thank you, on the ballot. And then the Legislature came back and said, secondary offense, is that okay? And the people have said, we'll live with it. So I think this is a great discussion, but I don't know that this one is even remotely--although Senator Schimek says there's money available--remotely germane to this. But again, if it's adopted, I mean I don't think there's a whole lot of folks that would think, wow, this is a great idea, let's raise people's taxes and make it a primary offense to not wear a seat belt. I'm just thinking through the logic of what we're doing today. I thought we were talking about the funding of roads. Senator Schimek wants to talk about additional federal funds available. Because of our inability to follow the federal recommendations for seat belts, the reality is, is that we don't lose federal funds in other places, and whether there's federal funds available is probably speculative because Congress isn't funding the roads now. And even if they are--I was reading through Senator Schimek's article she handed out--even if Congress does fund them, there's no guarantee that the Department of Roads is going to build them. And so from the standpoint of where the problem is, it's not simply on the funding side. It's simply on the recognition of reality side. And there appears to be some gaps in funding and there appears to be a just as obvious gap in the ability of the Department of Roads to access the funds that are available. Senator Schimek is right to bring this amendment to make that point. My hope is, is that that's what she's doing, is making a point, because I'm not inclined,--and maybe you'll say, well, you weren't inclined anyways--I'm not inclined to support this amendment and I'm definitely not inclined to support this bill. Because I will remind you yet again, this bill does nothing to fund our roads. It changes the process. If you don't pass the A bill you get no more money to build any of the roads. That's all it does. This is tinkering with the machinery. That's it. If you don't pass the A bill--and let me just again make this point not that it needs to be belabored--but you set the appropriations for the Department of Roads at this amount, and below that amount is the fixed amount and in between is the variable. All we're doing is potentially raising the fixed if you don't raise the top, so you're just making more of the money come from the fixed side of the formula than the variable side, and you have the same amount of money for the Department of Roads to spend on roads. And even if you adopt Senator Schimek's amendment and somehow miraculously this gets to the Final Reading and it goes to the Governor and miraculously becomes law, there's no guarantee there's money there. There's the potential. But back up to what the Speaker told us earlier. There's already a known shortfall from Congress on their obligations to provide us funding for roads. What makes you think that this is going to be money in the bank? I rise in opposition to the amendment. I hope it's a valuable point that Senator Schimek would like to make, but I think it's a poor public policy decision to be made on this bill. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Chambers, you're

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recognized. [LB846]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is one of those kinds of bills, the bill, that I've opposed every time it comes up, every time. I wish I had kept an article that was in the paper the other day which was detailing the higher percentage of people who wear seat belts who are dying in these crashes. That percentage rate is increasing. But I do not want the police to have another reason to stop black people. They're not interested in our safety. When they stop a black person because they say a tail light is out, they use that as an excuse to harass. A young black man was killed by the police the other day because some guys in unmarked cars said the car didn't stop at a stop sign. Unmarked cars are not supposed to be enforcing traffic laws. There are a lot of questions raised, and the cop who shot him is the one who happened to have shot another young black guy. And the questions are not being answered and when the chief of police in Omaha, as soon as one of these things happens, will say this is cut and dry, it's correct, and there hasn't even been an investigation, I am not going to agree to anything that lets these killer cops in Omaha have another bogus reason to stop black people. They could...they're killing us, so they're worried about me having an accident? Heavens no. So I'm going to fight this amendment, and if it gets on the bill--I haven't been fighting the bill, I've been having fun with it--I'm going to fight it too. But Senator Schimek knows that I'm opposed to this amendment. If somebody wants to wear a seat belt, fine. If they don't want to wear one, fine. I've not told anybody ever don't wear a seat belt. In fact, I tell some people if you're going to be in circumstances, for example, if there are very slippery roads and you might be in an accident, wear a seat belt. It doesn't guarantee that you're going to survive, but it's not going to make it more likely that you'll die, although in some accidents the fact that a person has a seat belt which cannot be disengaged has contributed to the person's death. So it's one of those issues where you can say yes and no and even maybe so. But the main thrust of something like this might be trying to get some federal money. Senator Carlson, it takes more than \$7 million to change something that I hold as a principle. So this is an amendment which has been offered as a bill which Senator Schimek pointed out. Senator--I'm trying to think who--Senator Byars used to bring it. He was on this issue. Maybe if he had been paying more attention to what was happening down there in Beatrice we'd have had not as bad a situation there as we have here. And they were belting people in beds in Beatrice for far longer periods of time than they should, and some people who shouldn't have been belted in at all. This idea of artificial restraints troubles me, but when you are going to compel somebody to wear a seat belt in that person's own vehicle, and an officer does not have a right to violate the space in your vehicle without probable cause, then the state should not intrude into that vehicle and say you must wear a seat belt if you're an adult. Child restraint contraptions, apparatuses, are all right. Children should have that extra protection. But I have to say to Senator Harms, even though I voted for his bill on the school buses, I probably am going to get off that bus. I received some information... [LB846]

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PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CHAMBERS: ...which I didn't have before, so I'm reevaluating, and it will just show that I will take a position and if I'm shown something to indicate my position was incorrect I will change it. But I'm still working my way through it. I just want to alert Senator Harms to that. I don't think Senator Schimek intends to bring down Senator Fischer's bill. I don't think that for one minute or one moment or one instant. But whenever this proposal rears its head while I'm here, I want to take my shots at it and point out that I disagree with it. I do not think it is wise policy and I will oppose it, if it ever does go to a vote. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Kruse, followed by Senator Burling, Senator Schimek. Senator Kruse, you are recognized. [LB846]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I'm standing to correct an implication from Senator Erdman. He was sort of raising the question as to whether the government would ever appropriate this \$10 million. It's in the bank. This has been appropriated. The funds are there. They run out in the next fiscal year. Seven million is guaranteed to Nebraska if we do it, and then we divide up the money from the other states. If we don't do this, the other states will divide up our \$7 million. But the money is there. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Burling, you're recognized. [LB846]

SENATOR BURLING: Thank you, Mr. President, members of the body. I stand to oppose this amendment, AM2324, on the basis that I don't think it belongs on this particular bill. But if you disagree with that, that's fine. I have always supported the secondary offense for seat belts. I don't support a primary offense for seat belts because, well, one reason is because I think people ought to have that option. I think probably it's true that we should all wear seat belts and it's okay to require them in vehicles. But because I have a seat belt on when I drive doesn't make the road any safer for you. It might make a situation safer for me, but traffic violations I think are those things that I do to make the road more dangerous for those around me. When I wear a seat belt, it doesn't make me any better driver of my vehicle or provide more safety for those around me. So I'm opposed to the primary offense. And I was inclined to vote for the bill, but I would not if this amendment passes. Thank you, sir. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Burling. Senator Schimek, you're recognized and you are the last in the queue. Do you wish to use your time or close? [LB846]

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SENATOR SCHIMEK: I would just like to close, Mr. President, and I would like to thank you and the body for their indulgence on this. Actually, we're talking about...maybe about \$50 million here. We're talking about the \$7 million to \$10 million to \$14 million, approximately, that are there for incentive funds to get us to do the seat belt law, but we're also talking about another \$43.5 million that's sitting there in federal accounts waiting for us to use for some of these road projects, and I don't think we can...we should overlook that. I don't know if there's any others out there that we don't know about, but these were brought out in a story by the World-Herald. I do not want to pursue this amendment. I do not want to do anything to harm the bill. I told Senator Fischer that up front. I'm supportive of the bill. I think it is a long-term solution. I think we need to think long term and I don't think that we need to be taking funds out of the reserves or any other place in our budget. I think we need to do something this year to solve this problem and I think this bill is a good step towards doing that. So with that, Mr. President, I'd like to withdraw my amendment. [LB846]

PRESIDENT SHEEHY: AM2324 to AM1731, an amendment to committee amendment, is withdrawn. Mr. Clerk, do you have items for the record? [LB846]

ASSISTANT CLERK: Mr. President, I do. Senator Harms has an amendment to LB1092 to be printed. And interim study resolutions: LR296 by Senator Avery; LR297 by Senator Nantkes. (Legislative Journal pages 1105-1108.) [LB846 LB1092 LR296 LR297]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will return to floor discussion on the Revenue Committee amendment, AM1731. Are there members wishing to speak? Seeing none, Senator Janssen, you're recognized to close on AM1731. Senator Janssen waives closing. The question before the body is, shall AM1731 be adopted to LB846? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of committee amendments. [LB846]

PRESIDENT SHEEHY: Revenue Committee amendment AM1731 is adopted. We will now move to floor discussion on the advancement of LB846. Are there members wishing to speak on this bill? Senator Chambers. [LB846]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this is not a bill that I like. It's not a bill that I will support. It is a bill that has political ramifications and I think that the people who wind up supporting this bill should support it all the way across the board unless they change their mind before it reaches Final Reading. But if it once reaches Final Reading and they support it there, they ought to support it, period. What value is there to the Legislature as an institution to support a bill, and then if the Governor vetoes it all of a sudden you don't believe in it anymore? You mean to tell me

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that your belief is based on what the Governor does? Is that what people are saying? No. What they're saying is that they're cowards. They are moral and political cowards. They're going to do a lot of huffing and puffing and they'll grind somebody like me, who opposed the bill, into the ground during the discussion. But then, when the crunch comes, they jump right over here where I am and don't support it. Well, I was straightforward. I didn't support it anyway. Why will you support it and then bail out if the Governor vetoes it? Does he own you? If you were black and the Governor was white and you did that, we'd call you an Uncle Tom if you were a man and an Aunt Jemima if you were a woman. You sell out your principles to get along with somebody who doesn't even respect you. He sits over there and he laughs at you, the little munchkin, I would say, except I won't because that's a term I want to reserve for my colleagues. You all are the munchkins and you're going to show it when you start munching at the lunches provided by the lobbyists. So the Governor cannot even receive what I wanted to hang on him because you all stole it. Look at my munchkin friends. Look at you. You know who you are. You come over here. Senator Stuthman talked about Little Orphan Annie brushing the crumbs away. Senator Stuthman, there won't be any crumbs left for Little Orphan Annie to touch when these munchkins get through, lunch-hunters, moochers, spongers, leechers...leeches. Where is your pride? What I ought to do is tell the lobbyists, now you put that meatloaf sandwich on a piece of string, and then when they go for it, jerk it a little bit and they'll follow it right off the table, then have them running all the way down the hall chasing that meatloaf sandwich. And don't offer them a chicken dinner. Don't. Senator Aguilar, if you gave the combination of a meatloaf sandwich and a chicken dinner, they would have reached nirvana. You could get anything from them that you want. If you were to tell that senator I will give you \$5,000 to vote a certain way, they would be indignant and turn it down flat. But don't offer them vittles. Think about it. Is that the image you want those people to have in your district when you go there and ask them for your vote? Are you going to tell them, oh, and by the way, I munch and lunch off the lobbyists, I regularly do it; I stay late but I stay late because I get a free meal from the lobbyists? Pride! Now that brings me back to what I was saying. Where is the pride that legislators would have in the institution? And if you don't think anything of the institution because you haven't reached the point where you think in those terms yet, where's your personal pride? You going to let the Governor kick you in the rump and tell you, yeah, I'm going to let you play in the sandbox... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CHAMBERS: ...during the three stages of debate, but then when I get into the game you better back off, and then you back off. It'd be better for you not to do anything at all because "Parson" Carlson understands that if you do that you're like the dog returning to its vomit. Now that's the way you can view yourself if you act so boldly to support something, then as soon as the Governor bares his teeth you take off running. I don't like the bill, but if you vote for it you ought to stay with it. Thank you, Mr. President. [LB846]

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PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there other members wishing to speak on the advancement of LB846? Seeing none, Senator Fischer, you're recognized to close. [LB846]

SENATOR FISCHER: Thank you, Mr. President, and thank you, members. Once again, I do appreciate the discussion we've had. I appreciate the comments that were made and the points that were brought out. We've reached a crossroads with roads funding here in Nebraska. I would say to you that we've reached a crisis. It's time to decide how important our highways and our roads are to us at the state level, at the county level, and at the city level. I believe that LB846 stresses that importance and I would ask for you to help me advance this bill. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing to LB846. The question before the body is, shall LB846 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846]

ASSISTANT CLERK: 27 ayes, 12 nays on the motion to advance the bill, Mr. President. [LB846]

PRESIDENT SHEEHY: LB846 advances. We'll move to next item under General File, Mr. Clerk. [LB846]

ASSISTANT CLERK: Mr. President, LB846A, introduced by Senator Fischer. (Read title.) [LB846A]

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on LB846A. [LB846A]

SENATOR FISCHER: Thank you, Mr. President, members of the body. The A bill is for \$16 million that will be funded for the state portion of the 5 percent on the wholesale tax. Thank you. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to LB846A. Members wishing to speak, Senator Erdman, you're recognized. [LB846A]

SENATOR ERDMAN: Mr. President, members of the Legislature. Senator Fischer, would you yield to a question, please? [LB846A]

PRESIDENT SHEEHY: Senator Fischer, would you yield? [LB846A]

SENATOR FISCHER: Yes. [LB846A]

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SENATOR ERDMAN: Senator Fischer, help me. I don't think I got my previous explanation of how the appropriation works and then how the taxes work, and so I want to go through this. In the event that your bill, your underlying bill, LB846 passes, without the A bill your bill does not affect the gas tax increase over what's already in the budget. [LB846A LB846]

SENATOR FISCHER: Senator Erdman, are you talking about the state portion... [LB846A]

SENATOR ERDMAN: Correct. [LB846A]

SENATOR FISCHER: ...or the city and county portion? [LB846A]

SENATOR ERDMAN: The state. The state's portion of the gas tax tied to the variable, because the counties and cities are not. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: But the variable portion of the gas tax, your bill, without an increase in appropriations from the Department of Roads, does not raise or affect that side of it. There's no new money, essentially. Your point here is that because of the fixed cost that potentially brings in more revenue, how does that work in that formula, your \$16 million here? And it's not a very good question because I'm trying to figure out how to say this so that you'll answer it the way that I think you need to so that I can get the answer that I want. [LB846A]

SENATOR FISCHER: (Laugh) [LB846A]

SENATOR ERDMAN: So let me ask it... [LB846A]

SENATOR FISCHER: That's why I'm not answering yet, Senator. [LB846A]

SENATOR ERDMAN: Let me ask it a different way. [LB846A]

SENATOR FISCHER: Would you keep trying to rephrase that? [LB846A]

SENATOR ERDMAN: What happens if your A bill doesn't pass? [LB846A]

SENATOR FISCHER: If the A bill doesn't pass, then the Department of Roads will not have the funding for, I believe it's, January through June. Funding will be available for cities and counties. [LB846A]

SENATOR ERDMAN: If the underlying bill passes but not the A bill. [LB846A]

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SENATOR FISCHER: If the underlying bill passes there will be approximately \$2 million available for the cities and counties in addition to what they currently are receiving in the allocation fund. [LB846A]

SENATOR ERDMAN: So just...let's stop right there. In the event that the A bill passes, it's a benefit to the local governments for funding of roads, but not a benefit to the state's portion of funding roads. Is that what you just said? [LB846A]

SENATOR FISCHER: That would...if I am understanding you correctly, Senator, I believe it's the other way around than what you just said. The state will benefit with the A bill. [LB846A]

SENATOR ERDMAN: Right. My point was if the A bill doesn't pass, that was my question, and you said the cities and counties will get \$2 million more. So if the A bill does not pass but the underlying bill does, cities and counties get \$2 million more because of the mechanism, the wholesale tax. The state wouldn't get that increase. [LB846A]

SENATOR FISCHER: That would be correct, which is what I was trying, when Senator Hudkins asked me a question on the bill when we had the discussion about the split between the state with the cities and counties, and how we had a different adjustment, a different percentage on that split under the wholesale tax. Part of that reason was because cities and counties will receive that revenue from the 5 percent wholesale tax no matter what this body does. [LB846A]

SENATOR ERDMAN: Right. And that's because their roads funding is independent of our roads funding to the extent that they get the fixed tax regardless of where we set the variable tax, and it's the budget at the Department of Roads that drives the cost of the variable tax. It's not what we have done in LB846. So let me rephrase that just so it's clear. They get the money because they're not based on our appropriations process. Money from the state for funding roads is based on where we set the funding authority for the Department of Roads and then that's what makes up the difference between the fixed tax and the amount, is that variable tax in between. [LB846A]

SENATOR ERDMAN: One minute. [LB846A]

SENATOR FISCHER: That would be correct. [LB846A]

SENATOR ERDMAN: Okay. So the money that's in your A bill, the \$16.102 million, goes in the Highway Cash Fund, and then that same amount from the Highway Cash Fund, or is it a different amount...? Excuse me, the same amount but not the same dollars are also appropriated to the Roads Operations Cash Fund. As I understand that,

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the money is in the fund, but then we authorize the Department of Roads to actually spend it. Is that an accurate understanding of how the funds work? We put the money in the cash fund... [LB846A]

SENATOR FISCHER: Could you rephrase that just again? [LB846A]

SENATOR ERDMAN: We put the money in the cash fund, but for the Department of Roads to spend the money, it has to be in the Operations Fund for the purposes... [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: ...of building roads. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: Okay. So what is the actual tax increase, in a cent, with this new appropriation? Is there any? [LB846A]

SENATOR FISCHER: We had this discussion last year on the budget. [LB846A]

PRESIDENT SHEEHY: Senator Erdman, your new time is running. You may continue. [LB846A]

SENATOR ERDMAN: My second time? [LB846A]

PRESIDENT SHEEHY: Your second time. [LB846A]

SENATOR ERDMAN: Fantastic. Senator Fischer, go ahead. [LB846A]

SENATOR FISCHER: Okay. I guess I would say to you, Senator Erdman, we had this discussion last year on the budget when the Appropriations Committee came to us with an increase in the Department of Roads' budget. At that time, the discussion was that the gas tax will go up 1.8 cents, and some of us tried to say it could go up 1.8 cents. And I know you understand that it's based on consumption and a number of factors, and that is why we saw, instead of an increase in the gas tax, if we would have stayed with the Appropriations' budget and the budget that this body passed last year... [LB846A]

SENATOR ERDMAN: The one that the Legislature failed to present a motion to override the Governor's veto? [LB846A]

SENATOR FISCHER: Exactly. [LB846A]

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SENATOR ERDMAN: Okay. [LB846A]

SENATOR FISCHER: Then we would have had a two-cent decrease in gas tax instead of the four-cent decrease, because there was an increase in consumption. So it could have that. Saying that, I believe I have always been totally up front in the fact that this could be a three-cent increase. [LB846A]

SENATOR ERDMAN: And that's with the A bill and the mechanism in the underlying bill. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: Okay. If we look at the actual language of the A bill to LB846A, excuse me, the A bill to LB846A, the last sentence says that no expenditures for permanent or temporary salaries and per diems shall be made for the funds appropriated. We have addressed that in the budget. The \$14.5 million that's in the budget that's sitting on Final Reading in LB959--and again you're right, it's a projected two-cent increase in the gas tax--will fund the shortfall at the Department of Roads for salaries. And Senator Fischer said yes. So then my next question... [LB846A LB959]

SENATOR FISCHER: Nope, nope, nope, nope, wait a minute. Could you...could you ask that again? I'm sorry, I was talking with an expert. [LB846A]

SENATOR ERDMAN: Fantastic. The money in the budget is \$14.5 million to fund salaries at the Department of Roads... [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: ...which would be precluded from this money being used for that same purpose under your A bill. This is actually for building of roads and could not be used for any other purpose because of the way that the A bill is written. [LB846A]

SENATOR FISCHER: I would say that's correct, but behind me I'm hearing it doesn't matter because they're both going for the same purpose. [LB846A]

SENATOR ERDMAN: What doesn't matter? [LB846A]

SENATOR FISCHER: I guess you can pick which answer you like on that one. [LB846A]

SENATOR ERDMAN: (Laugh) I'd just like an answer. That would be fantastic. [LB846A]

SENATOR FISCHER: I gave you two. [LB846A]

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SENATOR ERDMAN: I know. [LB846A]

SENATOR FISCHER: Okay. [LB846A]

SENATOR ERDMAN: And that's why I said I'd like a answer. [LB846A]

SENATOR FISCHER: The \$14.5 million is for salaries and benefits. [LB846A]

SENATOR ERDMAN: And as long as that money is there... [LB846A]

SENATOR FISCHER: Right. [LB846A]

SENATOR ERDMAN: ...they get the money for salaries. If for some reason...now, just hypothetically, if the Legislature's budget doesn't pass the Governor's veto or the Governor vetoes that out and we don't override it, that \$14.5 million has to come out of Roads somewhere else but it can't come out of the \$16.1 million. [LB846A]

SENATOR FISCHER: It would come out of the total... [LB846A]

SENATOR ERDMAN: It's an accounting game essentially. [LB846A]

SENATOR FISCHER: It would come out of the total,... [LB846A]

SENATOR ERDMAN: Right. [LB846A]

SENATOR FISCHER: ...the \$30 million total. And if you remember the...that \$14-some million that was included in the Appropriations' budget was due to a...as a result of a union settlement for salaries for the department. [LB846A]

SENATOR ERDMAN: Right, it was for salaries. But the Roads' funding was supposed to take care of that cost. And because of the projections in the income, it didn't meet that, and therefore, we had to raise the authority for the Department of Roads to spend that, which if projections are where they're proposed to be, it's a 1.2 percent increase. If it's above that, it may not increase the gas tax at all. [LB846A]

PRESIDENT SHEEHY: One minute. [LB846A]

SENATOR FISCHER: The reason...my understanding was in the budget process the reason the Appropriations Committee presented that figure to us, and the reason for it and that this body adopted it was so that they're...yes, it is the Department of Roads' budget, but it was included so that there would not be a loss of funding for... [LB846A]

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SENATOR ERDMAN: From the building of roads. [LB846A]

SENATOR FISCHER: Well, or for maintenance. [LB846A]

SENATOR ERDMAN: Right. [LB846A]

SENATOR FISCHER: Because right now, remember, we are in a maintenance preservation mode. [LB846A]

SENATOR ERDMAN: Understood. [LB846A]

SENATOR FISCHER: This is not...this is not new construction... [LB846A]

SENATOR ERDMAN: Understood. [LB846A]

SENATOR FISCHER: ...that we're dealing with under the budget. [LB846A]

SENATOR ERDMAN: Right. I'll follow up with that at my next time. I believe my time is up. Thank you, Mr. President. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Erdman, you may continue for your third time. [LB846A]

SENATOR ERDMAN: Senator Fischer, if I might follow up on that last comment then. You're talking, and your last statement was that either in the budget or in this bill there is no new money to build new roads. Is that what you just said? [LB846A]

SENATOR FISCHER: No. I'm sorry if I wasn't clear on that. I was referring to the budget. [LB846A]

SENATOR ERDMAN: The budget as we have it now. [LB846A]

SENATOR FISCHER: As we have it now. [LB846A]

SENATOR ERDMAN: Your bill is not part of that, obviously, but when we're all done you're telling us that there's 16 million more dollars for either maintaining or building roads than we currently have. [LB846A]

SENATOR FISCHER: Yes. [LB846A]

SENATOR ERDMAN: And whether or not it falls under maintenance or building will be determined by the Department of Roads and what their priorities are and what they want to build or what they have proposed to build, and what fits into their five-year

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plans. [LB846A]

SENATOR FISCHER: Through...as I said, the Department of Roads is a code agency, and they work with the Governor on deciding what the priorities are and what their budget is, until we set the budget for them within this body. [LB846A]

SENATOR ERDMAN: Okay. Now, I'll ask you one more question and maybe the experts near you can help because this is more of a budgetary issue than it is a... [LB846A]

SENATOR FISCHER: Okay. [LB846A]

SENATOR ERDMAN: We have increased the appropriation to the Department of Roads \$14.5 million in the budget, and we're going to increase it another \$16.1 million here. So...and the total, the actual increase to the Department of Roads is just over \$30.5 million for the remainder of this budgetary year, this...the end of this biennium. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: You have changed, in LB846, the fixed tax side of that, the fixed cost, the fixed tax to this wholesale, while retaining the 2.5 cents, but we still have the variable. In the event that the projections are as we expect them to be, at least, obviously for the next six months... [LB846A LB846]

SENATOR FISCHER: Under the A bill. [LB846A]

SENATOR ERDMAN: ...under both the A bill and the budget, what we're projecting consumption to be, what we're assuming all the other factors that drive the use of gasoline, are we talking about a two-cent increase under the budget and a one-cent increase under your bill, or are we talking 3 total? [LB846A]

SENATOR FISCHER: I would say your first statement is correct. It's the one... [LB846A]

SENATOR ERDMAN: So it's about 4.3 percent total potential gas tax increase from all sources if both the budget and your bill, with the A bill, passed. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR ERDMAN: Let me ask the last question, and... [LB846A]

SENATOR FISCHER: I thought you just did. [LB846A]

SENATOR ERDMAN: ...leave you alone. [LB846A]

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SENATOR FISCHER: (Laugh) No, please, keep asking questions. That's how we learn. Me too. [LB846A]

SENATOR ERDMAN: Can you give me--and this is your opinion, not the members of the Appropriations Committee--can you give me the strategy that is being used here to raise the gas tax in two separate bills than in one. If you knew, going forward, that we were going to have this discussion on your bill, and you intended fully to go forward with the A bill, granted there are two different purposes. Ones for salaries, one's not. But as you've just admitted, it all comes from the same fund, so realistically it's irrelevant. As long as the money is there, if it's not prohibited for them using it, they can do whatever they want. Why would we have not taken that out of the budget if you were going to go forward with your A bill? [LB846A]

SENATOR FISCHER: We had this discussion last week, Senator Erdman, and you and I are friends. [LB846A]

SENATOR ERDMAN: I agree. [LB846A]

SENATOR FISCHER: I felt that the Appropriations Committee presented their budget. The \$14 million was a part of their budget. It was not for roads construction or maintenance. It was part of the running of the department. We always discuss the Department of Roads' budget during the Appropriations Committee's presentation of their budget bill. I felt that was an appropriate time and an appropriate place to address their proposal. We are now on a new bill. We are on a new proposal... [LB846A]

PRESIDENT SHEEHY: One minute. [LB846A]

SENATOR FISCHER: ...which I believe is separate. It is a separate decision from the appropriations budgeting process and this body's budgeting process. [LB846A]

SENATOR ERDMAN: Okay, and I've got a little less than a minute. Are you--and feel free to say you're not sure, or whatever--are you committed to both of these bills, the budget and this bill with the A bill, through this whole process, including pursuing a motion to override if the Governor would veto both bills? [LB846A]

SENATOR FISCHER: I am...yes. Simply yes. [LB846A]

SENATOR ERDMAN: And if a motion is...? [LB846A]

SENATOR FISCHER: And I, on...depending on what the Appropriations Committee does, if there is a veto coming from the Governor on that, it depends on what they do, I would be willing to introduce a motion to override... [LB846A]

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SENATOR ERDMAN: And the same with your bill, obviously. [LB846A]

SENATOR FISCHER: ...and I would certainly introduce a motion to override if there is a veto on this. [LB846A]

PRESIDENT SHEEHY: Time, Senator. [LB846A]

SENATOR ERDMAN: Thank you, Mr. President. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Thank you, Senator Fischer. Senator Raikes, you're recognized. [LB846A]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator Fischer, if I could bother you with another question or two? [LB846A]

PRESIDENT SHEEHY: Senator Fischer, would you yield? [LB846A]

SENATOR FISCHER: You never bother me, Senator Raikes. [LB846A]

SENATOR RAIKES: Well, I'll try. (Laughter) Just so I understand the conversation that you and Senator Erdman had... [LB846A]

SENATOR FISCHER: Maybe you can explain it to us. [LB846A]

SENATOR RAIKES: Well, in effect, what you're saying is that with the combination of the budget bill and this A bill we would be increasing the Department of Roads' budget by \$30--and a little bit--million. [LB846A]

SENATOR FISCHER: Correct. [LB846A]

SENATOR RAIKES: Okay. And I think you also said that the net effect of those two together on the gas tax would be four cents? [LB846A]

SENATOR FISCHER: Could be. [LB846A]

SENATOR RAIKES: Could be. Could be four cents. And part of that, it's not going to make a lot of difference to the person paying at the pump probably, but part of that might be due...would be due to the excise tax on fuel, and part of it would be to the variable tax? Would the variable tax increase as a result of...if the budget bill and the A bill are adopted? [LB846A]

SENATOR FISCHER: The variable tax could increase because of the appropriation

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process that we went through with the budget. The excise tax, the 5 percent on the wholesale price of gas would bring in the other revenue that would be available that the body could use through this A bill then. [LB846A]

SENATOR RAIKES: Roughly speaking, in the first... [LB846A]

SENATOR FISCHER: Roughly speaking. I mean, you and I both know right now we're at 23 cents a gallon for tax, for a fuel tax. We were last year at this time over 27 cents. July 1 we dropped the gas tax because of factors involved there and we were at 27 cents. January 1 it dropped to 23 cents. Under these bills, you could say we're going back to that level. I don't do this lightly. Those of you who know me, know that I am not proposing this is in a light manner at all. This is serious. [LB846A]

SENATOR RAIKES: Okay. I appreciate that explanation. After...suppose the A bill passes, the main line bill and the A bill passes, in future sessions this would be an issue addressed by the Appropriations Committee, am I correct? We wouldn't be, other than in the budget bill, we wouldn't be having a floor discussion about the amount of money, the amount of increase that goes to the Department of Roads. [LB846A]

SENATOR FISCHER: That would be correct. [LB846A]

SENATOR RAIKES: Now, I'm just asking you to comment on this. One of the advantages of this approach that I think was explained at the hearing was that currently the Department of Roads presents a budget that would keep, as best can be estimated, would keep the variable tax the same. Okay. That's kind of the budget that's presented to the Appropriations Committee. They may occasionally say, well, we need more than that, and associated with that is an increase in the variable tax, and so on and so. But kind of the base line is we want to keep the variable tax the same. So one of the advantages, I'm told, and this is where I would like you to comment, is that if you now, with this new mechanism, budget according to that same standard... [LB846A]

PRESIDENT SHEEHY: One minute. [LB846A]

SENATOR RAIKES: ...that we are, in fact, going to keep the variable tax the same, this approach, this bill, this change in statute, will actually provide more funding to the Department of Roads than what would come otherwise via the old method. [LB846A]

SENATOR FISCHER: Yes, that is correct. I think...what we've heard this afternoon and we've heard it from a number of senators who are either for this bill or not in favor of the bill, is that we have to have more revenue for roads. That's the purpose of this bill is more revenue for roads. And it's more revenue at the state level, it's more revenue at the county level, and it's more revenue at the city level. Some of you don't know if this is the vehicle that you want to use. We've had that conversation. I don't think we can

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wait... [LB846A]

PRESIDENT SHEEHY: Time. [LB846A]

SENATOR FISCHER: ...but I think the consensus is here... [LB846A]

PRESIDENT SHEEHY: Time, Senator. [LB846A]

SENATOR FISCHER: ...that we need more revenue. [LB846A]

SENATOR RAIKES: Thank you. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Thank you, Senator Fischer. Are there other members wishing to speak on the motion to advance LB846A? Seeing none, Senator Fischer, you're recognized to close. [LB846A]

SENATOR FISCHER: Thank you, Mr. President and members. As I said, I don't take this lightly. This was hard for me to put my name on a bill that will be in the press and be characterized as a tax increase. Many of you who are supporting this bill, I would never dream of ever calling you tax-and-spend people. And you've laughed about that today but I know that all of you take this seriously. We are at a crossroads. This is what we need. This is a first step in a long, long process to keep our infrastructure and our state strong. I ask you to forward this bill with me, and I would like a call of the house, Mr. President. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing on the advancement of LB846A. There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846A]

ASSISTANT CLERK: 33 ayes, 0 nays, to go under call, Mr. President. [LB846A]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cornett, Senator McGill, Senator Engel, Senator Hudkins, Senator Dubas, Senator Lathrop, Senator Schimek, Senator Kruse, Senator Synowiecki, the house is under call. Senator McGill, Senator Lathrop, Senator Kruse, the house is under call. Senator Fischer, all members are present. How would you like to proceed? Senator Fischer has indicated she'll accept a machine vote. The question before the body is on the advancement of LB846A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846A]

ASSISTANT CLERK: 27 ayes, 10 nays on the motion to advance the bill, Mr. President.

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[LB846A]

PRESIDENT SHEEHY: LB846A advances. The call is raised. We'll move to next item under General File. [LB846A]

ASSISTANT CLERK: Mr. President, the next bill is LB1154. It was introduced by Senator Raikes. (Read title.) The bill was read for the first time on January 23 of this year, referred to the Education Committee. That committee reports the bill to General File with committee amendments attached. (AM2449, Legislative Journal page 1057.) [LB1154]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Raikes, you're recognized to open on LB1154. [LB1154]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. LB1154 deals with our work on the learning community organizational structure. It makes a number of changes which I guess several of which have been brought to us by school districts involved in the learning community we have in the metro area. There are some provisions that are a part of the green copy as it was introduced. I am going to go through those first, and then there were several others that became a part of the committee amendment which I'll devote some time to a little bit later on. Many of these are not particularly complicated or even substantive amendments, but several of them are important in terms of clarification and/or adding provisions that I think make the structure more workable. So just a quick listing. These are the things that are dealt with in the green copy. Coordinating councils would be expanded with nonvoting members and an advisory committee of superintendents would be required. The Secretary of State, rather than the Commissioner of Education, would be responsible for getting the council started for the first time. There is a provision in here that deals with modifications of school district boundaries that could occur before the initiation of the learning community. There is a provision that would basically provide for a phase-in or a hold-harmless-type provision for the distribution of the common levy in the learning community. That would last over three years. The learning community capital levy would...or the potential uses, I should say, for the learning community capital levy would be narrowed. There would also be some provisions streamlining the diversity plan and the educational opportunities options associated with them, and finally there is a modification in the green copy dealing with the qualifications for a group of school districts to become a learning community. A little bit of more detail on those. The first provision mentioned was adding a nonvoting member in the case of the metro area. Election districts have been set up. Those election districts are...at least one of the election districts is such that there may well be school districts that do not have an elected representative on the learning community council. So this would simply allow that in those cases a nonvoting member could be appointed from a member...or from learning community member districts who are not represented by an elected member.

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Those members would not be paid nor would they be on the achievement subcouncils. There is a new section that would require each learning community have an advisory committee of the superintendents of member districts. This was an addition. I think this was something that was brought to us also from school districts within the learning community. There are a couple of significant, I think, contributions that could be made by such a group. One of them is the review issues related to open enrollment and also proposals for focus programs, focus schools, magnet schools and pathways. It would be also a responsibility for them to provide recommendations for improving the academic achievement across the learning community, and then a catchall obligation to provide input to the coordinating council on issues that they request--that the learning community council would request. There is a section, as I mentioned, dealing with school district boundaries. There is a specific provision that would allow school districts to agree to a boundary movement prior to the establishment of the learning community, and also a provision to allow budget authority in case money would exchange associated with that move in the boundary. There are some provisions that I think will make it easier to deal with the financing provisions. One is dealing with the dates. The learning community actually, first, files their budget with member school districts, and that would be on or before September 1. And then there is a removal of the requirement that each school district has to file their budgets with the learning community. This was an issue raised by business managers in the learning community, and their particular concern was whether or not the time frame would allow this to be accomplished. There is also a provision, as I mentioned earlier, in this bill, to allow a phase-in or a hold-harmless or a transition into the common levy provisions concerning the distribution of property tax receipts in the learning community. That again provides that phase-in period over three years. There are some changes in regard to the diversity plan, clarifications about the educational opportunities provided and their association with open enrollment provisions and the focus school, transportation. It's clarification again that transportation would be provided by the school district the student attends. Again, transportation would be provided in a learning community under the open enrollment program. There are a number of changes dealing with focus schools, focus programs, and magnet schools. The main purpose of those changes are to clarify and to make consistent the definitions across the statutes dealing with the learning community, as well as in other cases, other parts of statute. There's some provisions dealing with open enrollment, again clarification removing duplicative language and transferring to some provisions in the statute. There's some provisions also that deal with elementary learning centers. Again, clarification and blending of or...yeah, making common the use of the language in the bill. Finally, there are changes to the qualifications to form a learning community. The change would be such that it would...the requirements are that there be at least three participating school districts to form a learning community. That is an overarching requirement. In addition, either all school districts in one or more counties are participating, and the districts are all in the sparse or very sparse cross grouping, or the districts have a minimum combined total of at least 2,000 students; or second, the districts have a minimum combined total of

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10,000 students. And these changes are basically an effort to make the application of this organizational structure more general across the state of Nebraska. So that is an explanation of the provisions in the green copy. If you have questions on those, I will try to answer them, otherwise I will stop here. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the opening to LB1154. Just for all members' knowledge, there is a change in the agenda as we move forward. Per the introducer and the Speaker's request, LB1130 will be passed over. As noted, we do have a committee amendment from the Education Committee. Senator Raikes, you are recognized to open on AM2449. [LB1154 LB1130]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. This, I will talk now about the provisions of the committee amendments, and there are several provisions of those, and again some of them, I think, are significant and substantial, so I want to emphasize those to you. The amendments limit the continuing student provisions for students enrolled in focus schools, focus programs, and magnet schools. This is maybe not a terribly significant provision but it does mean that a school...a student that enters a particular school district, a different school district than maybe their resident school district, through a participation in a focus program or a magnet program, would be allowed to continue in that district as long as they continue in a pathway for that focus or magnet program, but not necessarily if they drop out of that...or switch out of that program and become a regular student in that district. Learning community member districts would be required to report truancy information to the coordinating council, and learning community state funding could be used for up to six social workers in the elementary learning centers. The amendments also include concepts from a number of bill: LB605, LB1081, LB1021, LB1083, LB1005, and LB1158. From LB605, property tax authority for single district ESUs would be limited. From LB1081, ESUs would be allowed additional budget authority; from LB1021, an additional option would be allowed for some option enrollment students; from LB1083, learning communities would share in the ESU core services and technology infrastructure funds--and this is an important provision which I'll try to expound on a little bit; from LB1005, a sibling preference would be added to the open enrollment provisions; from LB1158, businesses could partner with learning communities or school districts to qualify for an additional \$5,000 in job training grants per job created. So again this is an important provision. A little bit on provisions dealing particularly with the educational service units. We now, as you may know, have two single district ESUs. Language in these committee amendments would limit the continuation of those...well, it wouldn't limit the continuation. Basically, it would say after 2012-13, I believe it is, those ESUs would neither receive core service funding nor have the ability to levy property taxes. In other words, there is a very strong encouragement for them to discontinue as single-district ESUs. But provision is clearly made in this bill that they can become multiple district ESUs, and that requires, among other things, a change in the governance provisions so that you could add a second district to those single district ESUs, and they would have a

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governance arrangement that is very similar to multiple ESU districts...or, in fact, exactly similar to multiple school district ESUs that exist now. There is also a provision, and again this is very important, that for the school districts that are a part of the learning community, half of the core services, the state funding that goes to the ESU would instead of going to the ESU go to the learning community council. This provides an important source of funding for the learning community council. Now, it may well be that much of that money ends up going back to the ESUs through a contractual arrangement between the learning community council and the ESU for services provided. The part of the money that, as I mentioned, half of the state funding, the core service and infrastructure funding money that comes to ESUs from the state would go to the learning community council only for those school districts that are in the learning community. The rest of the money would remain with the ESUs, and each school district would be required to be a part of an ESU. So that, I think, probably is the most important provision. The truancy reporting is certainly significant. There's not a requirement other than that those reports be made so that information like that can be created. Another one I should mention though concerns the job training. There is, as you know, job training money available for businesses in the state. The provision in this bill would make it so that a business could qualify for an additional amount of money--\$5,000--in grant funds per job created if they are...if they serve in certain...or if those jobs are provided in certain communities, particularly those in high-poverty areas or serving at-risk areas. So those are the provisions. I would be happy to try to address questions. There are a number of provisions, I realize, but I think they do fit quite well into a package dealing with the learning community. So I'll stop there. Thank you, Mr. President. [LB1154 LB605 LB1081 LB1021 LB1083 LB1005 LB1158]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the Education Committee amendment, AM2449. Mr. Clerk, do you have amendments to committee amendments? [LB1154]

ASSISTANT CLERK: Mr. President, the first amendment to the committee amendments is offered by Senator Gay, AM2517. (Legislative Journal page 1109.) [LB1154]

PRESIDENT SHEEHY: Senator Gay, you're recognized to open on your amendment to committee amendment, AM2517. [LB1154]

SENATOR GAY: Thank you, Mr. President. This amendment is an amendment that...it was earlier we had talked about in the Education Committee, and this amendment deals with the common levy. Part of the reason why I have this on here is that has been the biggest concern in my area, and the reason why is because this common levy affects 142,000 citizens in Sarpy County, 56,439 households, and 2,700 businesses. Because we assess property different, and we can talk about equalization all we want, but we assess property differently now, and this would be an amendment to get rid of the common levy provision under the bill, and let the learning community keep the five-cent

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levy that they have, which would currently be...that would be \$22 million is the way I understand it. The way this works now is the levy goes...they take 95 cents to the learning community and give it back to the school districts. This would allow the school districts to keep the 95 percent levy in their county, which would solve 95 percent of the funding problem, in my mind. Now, we have differences of opinions on this, and I want to have some discussion on the amendments. The differences of opinions are this: Why would one county...why do we do this in only one area and we don't do this throughout the state? I'm handing out something that I believe is the reason why, and I've discussed with several of my--I hope we're still friends--on the Education Committee, about my concerns about this. And I don't mean to be underhanded or anything like that, but it is a very legitimate concern. We're on Day 47, hearing a bill for the first time, the amendment here, and last year it was the same thing. We were late in the game, and we didn't have fiscal notes or anything like that. And so timing is everything, and unfortunately the timing is always running late for me and people in Sarpy County, and I just feel so strongly that this needs to be done. We just talked...I just heard a little bit, and I've got questions along the way about a phase-in on a common levy, about the ESU money going into the learning community. How much is that going to be? Job training money. We're talking about social worker money; we're talking about a lot of different funds in here. But my point is this: If we have a learning community that has not yet been formed and members have not yet been elected, to go out and create the learning community. Some of the concepts, I think, are very good and very noble. I discussed, last year, on statewide poverty. I just discussed it again on LB988, the other bill. And it's a statewide problem, but yet I believe we're focusing on one particular county or one area, and saying, go solve this problem. We don't quite know how you're going to do it, but go solve the problem. And by taking the common levy, it's a big part of where our grievance is. I don't think anyone is against trying to help poverty and some of these issues, but the way it's being funded is what I'd like to have a discussion on, and see if we can change. The learning community, as I said, has not been elected. No one has filed. Oh, people have filed; I take that back. And I think they will do a good job when the time comes. What I'm saying is, let's limit their resources at this point--\$22 million, plus the ESU funding, plus job training funding, plus the other...there was one more thing...plus social worker money we have in here. I think they have plenty of things to do right now, and to go fund it this way I don't quite understand. And maybe we will get to a point here I'll understand it better and you'll get to make a decision. But I think it is such an important issue that I would be completely remiss if I did not bring this up and talk on behalf of constituents. And I think you should be concerned, as a body, to say, is this the right thing we're doing? We haven't done it yet. Is this the right way? Are you absolutely sure this is the right way to do this? Because if this were in Dawson County, Buffalo County, any other county, and we forced you to do this, how would that go over? I don't think very well. So like I say, I don't mean...I'm always...it seems like I'm always in the adversarial position on this type of bill. I don't mean to be, but in a way I have to be. It's probably not my nature to be adversarial. I've discussed with many...I respect Senator Raikes and all the members of the committee, but I just believe that we're doing

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this the wrong way. I handed out a handout, and it talks about the migration of how people are coming into Sarpy County, and we've had success growing, and we've been very fortunate due to a lot of different factors. But part of that, even in the newspaper, if you look at that highlighted portion--I'm not going to read it for you--but the Legislature made it part of the Omaha area's new learning community education cooperative because of Sarpy County's growing enrollment and property tax base. Now, I didn't just dream this up. This has been a concern for many people, including our county treasurer who has stated many times, and many of you have received information from here about the discrepancies in valuation. So is it fair then that if we're going to do this, that somebody in a \$100,000 house that's being assessed at 98 percent versus somebody at 95 percent, how is that fair? I don't understand that. So as we do tax and tax issues, we always want to be fair. I'm not so sure that we can do that with a common levy. We will pay our part and do our part in the learning community, and I think we'd be a much better partner if we could get this particular point solved. I could probably go through here and complain about other things, and I don't want to. I picked out the most important part that I feel if we could get, it would be very helpful. Now, you're going to hear reasons why we can't do this, I'm sure, but yet I don't think any reason why we can't is insurmountable when we haven't even done one step of this learning community yet. We have not taken one step. A member has not even been elected to this board, and yet we're knowing exactly how this is to be done. So I'm saying now, let's fix this problem now and discuss the problem, and I'd ask for your interest during the debate. And maybe I will be proven to be completely wrong on this issue, but I'd ask for your interest in this and then whatever you decide, that's fine, but I think it's such an important issue at this point that I'd like people to pay attention, and that's what this amendment does, Mr. President. Thank you. [LB1154 LB988]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the opening to the amendment to committee amendment, AM2517. Members wishing to speak, Senator Gay, followed by Senator Raikes and Senator Pahls. Senator Gay. [LB1154]

SENATOR GAY: Thank you, Mr. President. I wanted to just continue on briefly, is what I discussed about. There is tweaking of this formula on Day 47, and here we are. We've got to get through three rounds of debate, and I don't want to...I want...there are some good things in this whole bill that I believe Senator Raikes has made concessions and is continuing to tweak it. The point is this: If this were so good last time we did it, why is this six pages long, and I think the bill is 44 pages long, that we know what we're doing at this point? I think the concepts are very good and I think we've come a long way, and I don't...like I say, I don't want to throw cold water on the whole idea, but at this point I think we can fix the problem before we get into a deeper problem. I've got to come back here next year, and many of you do too, and try to make this thing work. And like I say, I'd rather be trying to work in favor of promoting a good concept than always being on the defense here. And I'm not saying that I won't. I consider myself a team player and I know other people are getting frustrated with me always pointing out facts. But I think it

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is our duty to point out some problems. If we see a problem coming down the road, I think we should point it out, and that's what I'm doing at this point. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Raikes, you are recognized. [LB1154]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator Gay, thanks for raising the issue, because I think they are important issues. I will tell you that the common levy provisions do not go into effect until the 2009-10 school year. And you mentioned a couple of things about the 47th day and the bill arrives on General File, but I do think it is very manageable in the time frame we have to deal with it, so I hope we will do that. You also mentioned my failure at brevity, and I will concede that, and that's a common failure of mine, at least when it comes to bills. In this particular case, there are a number of provisions, and the length of the bill results, in part, because of the need to correct different sections of the bill and that sort of thing. Concerning the property tax distribution, which is, I think, one of the two significant issues that you raise, keep in mind that there is not part of the property taxes collected that go to the learning community. All of the property taxes collected go to the school districts. There is a 95-cent common levy that is shared among school districts proportional to the need calculated in the aid formula. And again, that highlights the importance of calculating needs in the aid formula. And in LB988, of course, we're trying to refine that, and make sure that is an accurate reflection of the costs, so that's the way that's done. Now, there's an additional discretionary levy authority that again is available to each school district, but again it goes to that school district. There is not something that's diverted away from that school district and deposited with the learning community council. The only funding that would be available to the learning community council would be an appropriation from the state, which we approved last year in the bill we dealt with last year, and if this bill is adopted there would be some additional funding made available to the learning community council via the ESU core services funding. So those are the provisions. In addition, I will tell you that even though there can be a common capital construction levy, there need not be. It may well be that, at least for at the outset, that there won't be one of those adopted by a...a common capital levy adopted by the learning community council. Hopefully that isn't true. Hopefully, they will proceed quickly with the establishment of focus schools and learning centers, which I think will certainly add to the educational opportunity in the community. But certainly the tax base that a school district has, which is can use to build buildings, is still available to that school district. So there are really provisions in the learning community law that are not in any sense drastic in terms of changing the provisions, particularly the property tax provisions that school districts deal with. You did mention, also as a second major issue perhaps, differences in levy authority or assessment ratios, if you will, between counties. That's certainly an issue that we deal with. We deal with it with NRDs, which, of course, cross over county lines. We have school districts now in the metro area that

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cross over county lines. So that's an issue that has to be dealt with. Statewide equalization... [LB1154 LB988]

PRESIDENT SHEEHY: One minute. [LB1154]

SENATOR RAIKES: ...and equalization across school districts is certainly an important issue. Your raising it is completely appropriate. I do think though that what we've done in this bill certainly doesn't aggravate that, and...or minimize, for that matter, the importance of dealing with statewide equalization as something we need to do. So I appreciate your raising the issues but I do not support this amendment. I think that the provisions in the bill, in this bill, as they are, should be adopted. I think this moves us in the right direction, and so again I would urge the defeat of this amendment. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Gay, this is your third time on AM2517. [LB1154]

SENATOR GAY: Thank you, Mr. President. The reason why this is such a concern is the school tax bill is the largest portion of anybody's property tax bill. There are discrepancies, and they're always trying to be fixed, and it's been a problem all along. But when you get into the school tax bill, it's a large, large portion of your property tax bill. But under this...does the learning...Senator Raikes, would you yield to a question? [LB1154]

SENATOR RAIKES: Yes. [LB1154]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB1154]

SENATOR GAY: Thank you. Under the learning community, do they get a five-cent levy right now? [LB1154]

SENATOR RAIKES: The learning community council? [LB1154]

SENATOR GAY: Yes. [LB1154]

SENATOR RAIKES: No. [LB1154]

SENATOR GAY: Okay. They don't get a five-cent levy? [LB1154]

SENATOR RAIKES: No. [LB1154]

SENATOR GAY: Do they get a building levy? [LB1154]

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SENATOR RAIKES: There is a...the five-cent I think you're referring to is a cap on a capital construction levy. But, of course, the learning community council could only use that levy to direct funds to a particular school district for a capital construction project. And as...I'm slipping a little bit on my memory as to exactly how that works, but I think they can only fund up to one-half of a capital construction project in an individual district. They also can levy up to two cents of a common building fund. [LB1154]

SENATOR GAY: Okay. How much ESU money are they going to get under this proposal you have? The Omaha...the metro area... [LB1154]

SENATOR RAIKES: I don't have a number in (inaudible)... [LB1154]

SENATOR GAY: What? How much of the ESU dollars are they going to get? [LB1154]

SENATOR RAIKES: An actual dollar number I don't have. I can get that for you. What it would amount to... [LB1154]

SENATOR GAY: I'd like that. This (inaudible). [LB1154]

SENATOR RAIKES: Okay. I will work on it. [LB1154]

SENATOR GAY: How much of the job training money will they get if they do job training under this (inaudible)? [LB1154]

SENATOR RAIKES: That would depend on how many jobs are created. [LB1154]

SENATOR GAY: Okay. But we don't know at this point. [LB1154]

SENATOR RAIKES: Right. [LB1154]

SENATOR GAY: And then you talked about, you said that there is a three-year phase-in, but then you just said it goes into effect in 2009, which, quite honestly, is not that far off. What if they did not have a common levy right now? Why do you need this common levy? [LB1154]

SENATOR RAIKES: The common levy, I believe is a critical part of the needed funding arrangement for the educational opportunities in the learning community. It enhances the provision of educational opportunities, the open enrollment provisions, and it also enhances the notion that you get, at least financingwise, equal educational opportunities for students in the metro area. [LB1154]

SENATOR GAY: Okay. On the...in which...like I say, on some of these opportunities, I do agree with and I have no problem with. There is a certain point though, I think the

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funding that's in here now with the common levy, is unfair. I've discussed that very much. You've got a common building levy. You've got other opportunities to receive money without the common levy. How much money would they receive though if they had no common levy? Do you know that? [LB1154]

SENATOR RAIKES: They being...? [LB1154]

SENATOR GAY: The learning community. [LB1154]

SENATOR RAIKES: The learning community council, I think right now the...without this bill, without any funding from part of the ESU funding, I think it's \$1 million per year. [LB1154]

SENATOR GAY: From there, unless they have this common levy. [LB1154]

SENATOR RAIKES: Well, actually the common levy...funds raised through the common levy go to the school districts. [LB1154]

SENATOR GAY: They don't go to the learning community? [LB1154]

SENATOR RAIKES: Right. [LB1154]

SENATOR GAY: Okay. So am I wrong then when I say the money does not go to...for...I levy it in my area; I give it to the learning community; and then it's redistributed back according to need? [LB1154]

SENATOR RAIKES: Yes. And it goes all to the school districts. There is not a cut taken, if you will, by the learning community on (inaudible). [LB1154]

SENATOR GAY: Then why do we have the common levy, in general, then if I'm moving this around, I don't understand how it works. [LB1154]

SENATOR RAIKES: Well, the common levy is to provide funding to the school districts, not to the learning community council. [LB1154]

PRESIDENT SHEEHY: One minute. [LB1154]

SENATOR GAY: The school districts, based on their need? [LB1154]

SENATOR RAIKES: Yes. It's... [LB1154]

SENATOR GAY: Okay. So if you have more need, you're going to get more money based on the common levy, correct? [LB1154]

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SENATOR RAIKES: Correct. [LB1154]

SENATOR GAY: Okay. And that's the point where I'm saying under what we just did we've added ESL and poverty money in the state formula that's going to the school districts. And now we're taking again a common levy and redistribution again to those schools in need. So it's almost like you're getting twice the money if you are a poorer school district, because needs minus resources equals state aid, correct? So if you have more resources, you're going to get more of the money from the common levy, is that correct? [LB1154]

SENATOR RAIKES: If you have more need, you would. It's distributed in proportion to need. [LB1154]

SENATOR GAY: And that goes to the point I'm trying to make very quickly, is do we do this in any other school district? No, we don't. The state steps up and goes and helps out, and that's what we're doing under that spending bill, and I think that's fine. [LB1154]

PRESIDENT SHEEHY: Time. [LB1154]

SENATOR GAY: Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Kopplin, you are recognized, followed by Senator Pirsch. Senator Kopplin. [LB1154]

SENATOR KOPPLIN: Thank you, Mr. President and members of the body. The common levy is really difficult to understand in our area. It affects school districts differently. For my own District 3 legislative district, Bellevue would react one way; Springfield, Papillion, and Gretna, another; and I'm not sure where Millard would fall but I would think they would probably approve of it. It's tough in my home district to explain to people why a school district that spends among the least but has to tax among the most to support that, still will lose money because of the common levy. I'd like to offer the rest of my time to Senator Gay if he would like it. [LB1154]

PRESIDENT SHEEHY: Senator Gay, you are yielded 3 minutes 50 seconds. [LB1154]

SENATOR GAY: Thank you, Mr. President. Thank you, Senator Kopplin. Back to if Senator Raikes would yield to a question again? [LB1154]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB1154]

SENATOR RAIKES: Yes. [LB1154]

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SENATOR GAY: Senator Raikes, under last year's law, it says for each fiscal year a learning community may levy a maximum levy of five cents on each \$100 of taxable property subject to the tax levy for elementary learning center facilities and for up to 50 percent of the estimated cost for capital projects approved by the learning community coordinating council. That's what it says under...that's what this says in AM2128 under...I think this is last year's LB988. [LB1154 LB988]

SENATOR RAIKES: Right. [LB1154]

SENATOR GAY: So they don't...so they cannot levy...you just said they couldn't levy. Now, can they...? [LB1154]

SENATOR RAIKES: No, no, I didn't say they couldn't levy. I said the funds raised via the levy go to the school district for the capital construction project. They are not accumulated for use by the learning community council. And maybe I misunderstood your question, but that was the response that I was offering. [LB1154]

SENATOR GAY: How much would that be then based on what last year's...? [LB1154]

SENATOR RAIKES: I don't remember that. A cent of levy...is that...you're asking me the question, a cent of levy authority in the learning community... [LB1154]

SENATOR GAY: Yeah. [LB1154]

SENATOR RAIKES: ...in the metro area learning community, how many dollars would that raise? [LB1154]

SENATOR GAY: Yes. [LB1154]

SENATOR RAIKES: I'm thinking something in the range of \$4 million, but again I would have to check on that. [LB1154]

SENATOR GAY: So that would be five cents, \$20 million. And as I'm saying, here...this just to me does not make sense. You take the money. We send it to a learning community. They give it back to my local school board to be spent, what's left, based on what the needs were decided of the learning community. They are losing control on the local level of 95 percent of their dollars. What I'm saying, give them the money they have, and then do that. They can get some of these things done and they're already being done through interlocal agreements and those things. Now, if we have to come back later and they need more money, we could do that. The council has not met yet. They haven't even been elected yet. So that's why I need to bring it up at this point, and I think I'm...and you agreed...and that's why I'm bringing it up at this point. It just does not make a lot of sense to me, and I want to talk to others about it. Would that make

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sense to you if that was done in your district? So I guess that's the question at this point. If we find later, which we can't...we don't know how much we're getting from the ESU, we don't know how much we're getting from job training, we don't know how much we're going to receive under this funding yet. Then why would we not change it at this point, and then come back and fix it? I'm going to be here and many of you will be here to fix this thing, and I promise I would come back and try to fix it and make this work. I do not always want to be adversarial. And like I say, some of the concepts, look on the record,... [LB1154]

PRESIDENT SHEEHY: One minute. [LB1154]

SENATOR GAY: ...last year...one minute...look on the record last year and see what my comments were, anybody. And I said then, I go, there's some merit in what's going on here however I disagree with how we're doing it. I still believe that and I still think we can make it work. This is just an important component to those people in Sarpy County, which is the third largest county in this state, so it's a very important issue to us and that's why I bring it up at this point. So as we go through here I guess I'd like to hear some of these numbers, and I know we'll see that on Select File. After the amendment is passed we will then see the numbers on Select File, and I don't know if we'll get those numbers. But it's hard to make decisions when we can't see some of the numbers here, so I guess that's why I bring this up at this point, and with that I'll close. Thank you, Mr. President. [LB1154]

SENATOR LANGEMEIER PRESIDING [LB1154]

SENATOR LANGEMEIER: Thank you, Senator Gay and Senator Kopplin. Those wishing to speak, we have Senator Pirsch, Kopplin, and Stuthman. Senator Pirsch, you're recognized. [LB1154]

SENATOR PIRSCH: I'll waive. [LB1154]

SENATOR LANGEMEIER: Senator Pirsch waives his time. Senator Kopplin, you're recognized. He waives his time. Senator Stuthman, you're recognized. [LB1154]

SENATOR STUTHMAN: Thank you, Mr. President, and I would like to yield my time to Senator Gay. [LB1154]

SENATOR LANGEMEIER: Senator Gay, 4:53. [LB1154]

SENATOR GAY: Thank you, Mr. President. I will, at this point, I appreciate you people yielding me time. The point is, I know...I seem to be the only one talking on this issue, and I understand that. I think I've said what needs to be said. Now you need to decide, did it make any sense? But put yourself in this situation once, and does it make sense

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to you, and that's what we got to decide. There's many people not here, and, you know, when we vote we'll have to have a call of the house. I don't know how many people were listening, but you that were can see where we're at on this. I just don't see the logic in this thing. It hasn't been explained fully to me and it affects my district, and I still don't. I have been following this thing for since we started. I followed it prior to getting here and I still can't make sense of it, and we still can't answer questions. And I don't say that to be mean-spirited. I'm saying it because we can't answer the questions. So as we look at this I'd urge your support to approve the amendment and support the amendment. Thank you, Mr. President. [LB1154]

SENATOR LANGEMEIER: Thank you, Senator Gay and Senator Stuthman. Seeing no other lights on, Senator Gay, you are recognized to close on AM2517. [LB1154]

SENATOR GAY: Thank you, Mr. President. I think I've said enough for those who were hopefully still paying attention to this. I hope you consider this. All I can offer you at this point is it's new; haven't elected anybody yet. When we do I think we would be a much better participant. I know when I talked to school board members and members of my constituents and people in the county, we're not opposed to all of this learning community. This is 95 percent of the problem though. I think if we could solve this, it would be best for the learning community, quite honestly. I think we would make a large, large improvement on where we're going, and I'm committed to try to make it work best I can into the future. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY PRESIDING [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Gay. You have heard the closing. The question before the body...Senator Gay. [LB1154]

SENATOR GAY: (Inaudible) call of the house. Call of the house. Thank you. [LB1154]

PRESIDENT SHEEHY: We do have a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1154]

ASSISTANT CLERK: 25 ayes, 0 nays, to go under call, Mr. President. [LB1154]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the legislative chambers. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Heidemann, Senator Janssen, Senator Nelson, Senator Nantkes, Senator Loudon, Senator Erdman, the house is under call. Senator Nelson, Senator Loudon, the house is under call. Senator Gay, when all members are present how would you like to proceed? [LB1154]

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SENATOR GAY: A roll call vote in reverse order. [LB1154]

PRESIDENT SHEEHY: Thank you. We are still waiting for Senator Louden who is on his way. Senator Gay, all members are present. We are...the motion before the body is on the adoption of AM2517 to AM2449. Senator Gay has requested a roll call vote in reverse order. Mr. Clerk. [LB1154]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1109.) The vote is 11 ayes, 19 nays, Mr. President. [LB1154]

PRESIDENT SHEEHY: AM2517 is not adopted. The call is raised. Mr. Clerk, we'll move to the next amendment to committee amendment. [LB1154]

ASSISTANT CLERK: Senator Kopplin would offer AM2516 to the committee amendments, Mr. President. (Legislative Journal page 1109.) [LB1154]

PRESIDENT SHEEHY: Senator Kopplin, you're recognized to open on AM2516. [LB1154]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. This is a simple amendment. On page 22, line 14, strike "The" and insert "Beginning with school fiscal year 2010-11 and for each school fiscal year thereafter." What this does is delay the implementation of a transportation program for one year. People wishing to serve on the learning community board have until August to file. There is no primary. You could have who knows how many people in one of these districts. You could have who knows what kind of background or training or whatever these people have, and yet the voting is such that you vote for one but two are elected. You could have people elected on a very small percentage. The point is this, that they will be elected in November 2008. They will take seat in January 2009. They will have to arrange for a place to meet. They will have to develop policies. They will have to get to know one another. And we're asking them to devise a very complicated transportation program by September. This amendment doesn't take away the requirement for transportation. It doesn't take away the need for transportation. It doesn't take away the good points of a transportation system. It simply says, give these guys time to get all of the mechanics of setting up a learning community out of the way before they are asked to devise a complicated transportation program. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. You have heard the opening of AM2516, amendment to committee amendment. Members wishing to speak from the floor: Senator Chambers, followed by Senator Gay. Senator Chambers, you are recognized. [LB1154]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature,

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Senator Kopplin, I would like to ask a question if he will oblige? [LB1154]

PRESIDENT SHEEHY: Senator Kopplin, would you yield? [LB1154]

SENATOR KOPPLIN: I will. [LB1154]

SENATOR CHAMBERS: Senator Kopplin, you began by mentioning how the election would occur, and I got into a discussion with somebody else. Does your amendment change the method of election, or it deals with something else? [LB1154]

SENATOR KOPPLIN: No. This simply deals with the transportation system, and I was just reminded that we delayed the whole implementation of things for a year so transportation is a year off. [LB1154]

SENATOR CHAMBERS: Okay, that's all I wanted... [LB1154]

SENATOR KOPPLIN: But it changes nothing on the elections. [LB1154]

SENATOR CHAMBERS: Okay. Thank you. That's all I have. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Gay, you are recognized. [LB1154]

SENATOR GAY: Thank you, Mr. President. I do support the amendment. And I just wanted to say earlier to thank the body for their time on that last issue. That was a...you know, it's a tough issue, I understand, but I just want to thank them for their time on that. This I do support, too, for the same reasons. I think many times we haven't even had the board yet and we're talking transportation policies, which is very important if...because all the moving parts, obviously, you can just imagine on transportation in 11 school districts. So I do support the amendment. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Raikes. [LB1154]

SENATOR RAIKES: Thank you, Mr. President and members. I just wanted to point out that the option enrollment program is delayed for...until 2010-11, so the points that Senator Kopplin raised about needing time to adjust and develop have already been recognized and is a part of the delaying the program. The transportation part of it is also delayed. So this amendment really is already taken care of in the bill, so I would just point that out. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Are there...? Senator Chambers, you're recognized. [LB1154]

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SENATOR CHAMBERS: Mr. President and members of the Legislature, I am paying very close attention to the debate, even when I'm in my office, but I noticed a bunch of my colleagues went out of here like a flock of sheep, and I found out they were going to the trough of the lobbyists, so if I step out I don't want you to think that's where I've gone too. I'm just trying to keep myself clean. Thank you, Mr. President. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Are there additional members wishing to speak on AM2516? Seeing none, Senator Kopplin, you're recognized to close. [LB1154]

SENATOR KOPPLIN: I will withdraw that amendment. [LB1154]

PRESIDENT SHEEHY: AM2516 is withdrawn. [LB1154]

ASSISTANT CLERK: Mr. President, I have nothing further pending to the committee amendments. [LB1154]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Are there members wishing to speak on AM2449, the Senator Chambers amendment? Seeing none, Senator Raikes, you're recognized to close on the Education Committee amendment, AM2449. [LB1154]

SENATOR RAIKES: Thank you, Mr. President and members. I would just remind you that this deals with a number of provisions regarding the learning community, and also it deals with ESUs and single district ESUs and providing some additional funding for the learning community council. It may be a time to mention that there is no fiscal note with this, so there's no additional funding requirement on the state. With that I ask your support of the committee amendment. Thank you. [LB1154]

SENATOR LANGEMEIER PRESIDING [LB1154]

SENATOR LANGEMEIER: Thank you, Senator Raikes. You have heard the closing on AM2449 offered to LB1154. The question before the body is, shall AM2449 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Have all those voted that wish to? Record, Mr. Clerk. [LB1154]

ASSISTANT CLERK: 25 ayes, 0 nays on the adoption of committee amendments. [LB1154]

SENATOR LANGEMEIER: AM2449 is adopted. Mr. Clerk. [LB1154]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB1154]

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SENATOR LANGEMEIER: Thank you. We return now to discussion on LB1154, the bill itself. Seeing no lights on, Senator Raikes, you are recognized to close on LB1154. [LB1154]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. I appreciate the discussion on this important issue and your support would be greatly appreciated. Thank you very much. [LB1154]

PRESIDENT SHEEHY: You have heard the closing on LB1154. The question before the body is, shall LB1154 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1154]

ASSISTANT CLERK: 26 ayes, 0 nays on the advancement of the bill, Mr. President. [LB1154]

SENATOR LANGEMEIER: LB1154 does advance. Mr. Clerk, next item. Speaker Flood, you are recognized for an announcement. [LB1154]

SPEAKER FLOOD: Thank you, Mr. President and members. As previously announced by the presiding officer earlier this afternoon, following the resolution of LB736 we will be passing over Senator Synowiecki's LB1130 regarding the merger of adult probation and parole services. We will then proceed to LB895 and be working into the evening, hopefully resolving that before we adjourn this evening. In the event that we resolve it quickly, we will be moving to LB1022 tonight. We'll have the agenda out at the conclusion of today and it will be a long one for tomorrow. We'll be working well into the night, tomorrow night. Thank you, Mr. President. [LB1154]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Continuing on the agenda, LB...items for the record. [LB1154]

ASSISTANT CLERK: Mr. President, thank you. I do have motions to LB1092 from Senator Stuthman, and an amendment to LB846 from Senator Hudkins to be printed in the Journal. [LB1092 LB846]

SENATOR LANGEMEIER: Thank you. Continuing on the agenda, LB736. [LB736]

ASSISTANT CLERK: Mr. President, LB736 was introduced by Senator Fulton. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Judiciary Committee. That committee reports the bill to General File with committee amendments. (AM2148, Legislative Journal page 953.) [LB736]

SENATOR LANGEMEIER: Thank you. Senator Fulton, you are recognized to open on LB736. [LB736]

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SENATOR FULTON: Thank you, Mr. President and members of the body. LB736, firstly I would like to thank Senator Carlson for making this his priority bill. This is a very important bill and I thank him for recognizing such. LB736 is about saving lives and reducing drunk driving recidivism. In 2006, alone, 86 Nebraskans lost their lives at the hands of a drunk driver. This accounts for one-quarter of all traffic-related deaths in our state. Of the nearly 13,000 arrests for driving under the influence last year, nearly one-third were repeat offenders. Because 50-75 percent of drivers whose licenses are revoked continue to drive on a suspended license, it is clear that license revocation in and of itself is not a sufficient legal remedy. LB736, as amended by the committee amendment, AM2148, which you'll hear about, provides a means of reducing not only DUI recidivism rates, but also the number of offenders driving under a suspended license. In so doing, this bill will reduce the senseless loss of life caused by drunk driving. The thrust of the bill is a requirement that ignition interlock devices be installed on every vehicle operated by the offender upon the first conviction for driving under the influence. These devices are likened to electronic parole officers requiring the offender to take and pass a Breathalyzer before the vehicle will start. Ignition interlock devices are effective in stopping drunk drivers from driving drunk again. Recent studies have shown a 60 percent reduction in drunk driving recidivism as a result of implementing ignition interlocks upon the first conviction. It stands to reason that a reduction in recidivism corresponds to a reduction in traffic fatalities. Studies conducted in New Mexico where the first mandatory interlock law was enacted in 2005, in fact, show a 25 percent reduction in alcohol-related traffic fatalities in the two years since the law was enacted. AM2148 will bring about such reductions by creating an opportunity for offenders to obtain an ignition interlock permit and install an ignition interlock device after serving a shorter revocation period, whether that revocation occurred as a result of judicial conviction or through the administrative license revocation process. If an offender's license is revoked by the DMV through its administrative license revocation authority, he or she would be eligible for an ignition interlock device after 30 days of a 90-day revocation for a first offense, and after 60 days of a one-year revocation for a second offense under Section 3 of that amendment. Accompanying the requirement to install an ignition interlock device is the requirement that the offender obtain an ignition interlock permit. This new type of permit is necessary for several practical reasons. First, having a distinct permit that states "ignition interlock permit" on the front of the card assists officers and law enforcement. This is so because the restriction is now placed in small print on the back of normal Class O licenses under the same restriction classification as that requiring corrective lenses. Second, a distinct permit prevents one from obtaining a new license in another state before the license revocation period has ended. And third, because the permit restricts the operator's travel only to work, school, alcohol treatment, and interlock service facilities, we are able to implement ignition interlock for second ALR offenses under Section 3(3) without triggering a loss of federal highway safety funds. While addressing funding, I would like to note that this bill is largely paid by offenders. In the case of ignition interlocks, the offender is not just

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paying for his or her transgression, but also for the benefit of a driving privilege that, albeit restricted, allows him to obtain assistance and maintain his way of life. In closing, I ask that you advance AM2148 to Select File with LB736. I ask you to advance it because it is principally the best means we presently have to reduce driving on suspension, drunk driving recidivism, and most importantly, the senseless loss experienced by too many Nebraska families. If we implement this bill, persons will be here tomorrow who may not otherwise be with us if we fail to act today. Thank you, Mr. President. [LB736]

SENATOR LANGEMEIER: Thank you, Senator Fulton. As you have heard, there are committee amendments offered by the Judiciary Committee. Senator Ashford, as Chair of that committee, you are recognized to open on AM2148. [LB736]

SENATOR ASHFORD: Thank you, Mr. President and members. The amendment, AM2148, was drafted primarily to make certain that LB736 was consistent with applicable federal law and federal rules to ensure that the state remains eligible for federal highway funds. It also has certain clarifying provisions. The amendment would make clear that an individual ordered by a court, what he or she must do to drive a vehicle equipped with an ignition interlock device. The person must obtain a permit to drive legally, so obtaining the ignition interlock device is not sufficient. An interlock permit is obtained by presenting a copy of the order requiring the interlock device to the Department of Motor Vehicles, showing of proof that the device has been properly installed, and paying the permit fee. I have...there are several sections involved in this amendment, and I'll try to go through each one as quickly as possible. Section 1 amends Section 60-480 and creates an ignition interlock permit. It states that the permit cannot be used to operate a commercial motor vehicle. Section 2 amends Section 60-497.01, to provide that a person who has a probationary order from a court requiring the installation of an interlock device will not be assessed points on his or her driver's record upon presentation of sufficient evidence that he or she has the probationary order, installed the ignition interlock device, and has obtained the permit for the ignition interlock. Section 3 provides eligibility for an ignition interlock permit for a person subject to administrative license revocation who have failed a chemical test for alcohol. Again, upon presentation of an order, probationary order from the court, in the DUI case for the same arrest, a person with a 90-day ALR revocation may apply for an ignition interlock permit after 30 days of no driving, or if a person has a one-year ALR a person may apply for an ignition interlock permit after 60 days of no driving. Driving with an interlock permit is limited to driving to school or to work, to alcohol treatment, or to an interlock facility. There are no interlock permits available for a person who refuses a chemical test. Section 4 of the amendments provides that the fee for an interlock permit will be \$45. Forty dollars goes--as Senator Fulton suggested, this is a self-funding initiative--\$40, for the most part, \$40 goes to the General Fund and \$5 goes to the DMV, which covers the cost of producing the permit. The amendment also creates a \$5 fee for a replacement or duplicate permit, or...and for any change of class, restriction, or

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endorsement for an employment, medical hardship, or permit. Section 5. This section tells the DMV to issue an interlock permit after receiving a copy of an order from a court or the Board of Pardons, proof of installation of the ignition interlock permit, and payment of the permit fee. Section 6 adds Section 11 of the amendment to the rules of the road section of the statute, a technical amendment. Section 7 allows the issuance of an ignition interlock permit to a repeat offender after one year of revocation has passed. Section 8 amends the DUI penalty sections so that a person who is convicted of DUI first offense may have an ignition interlock permit for operating a motor vehicle with an ignition interlock device. If the convicted person has an alcohol level under .15, the court may order an impoundment with no driving for six months or may order a six-month revocation with eligibility for an ignition interlock after 30 days of no driving. However, if the person is convicted of an alcohol level greater than .15-- .15 or greater--the person's license is revoked for a year, but he or she may apply for an ignition interlock permit after 60 days of no driving. Section 9 amends the section allowing the Board of Pardons to end a 15-year license revocation by either reinstating the person's operator's license or ordering a reprieve. Section 10 amends the interlock provision of statute to provide that an ignition interlock permit, not a Class O license, with an interlock restriction will be issued after an order from either the court for a DUI or the Board of Pardons. These are mostly technical amendments dealing with the existing statutes. Section 11 creates an ignition interlock fund. It provides for the collection of a fee. Section 12 harmonizes the provisions, that if the Board of Pardons issues a reprieve, the board shall order the person to obtain an interlock permit with...for operation of a motor vehicle with an ignition interlock device, which shall be issued as provided in prior sections. With that, Mr. President, I would urge the adoption of the amendment. [LB736]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening on LB737 and the committee amendments, AM2148. The floor is now open for discussion. Those wishing to speak, Senator Carlson and Senator Stuthman. Senator Carlson, you're recognized. [LB736]

SENATOR CARLSON: Mr. President and members of the Legislature, I was fortunate enough in this session not to need my priority on LB609, and thankfully Senator Christensen prioritized LB1094, so my priority was available. And one of the reasons that I became interested in this bill is because in the past year, near Arapahoe, Nebraska, a young mother was walking with a stroller and her young daughter, on the highway, and a drunk driver came up, and somehow she was able to push the carriage down into the ditch, but she was hit and killed. And the worst part about that was that this individual had five DUIs. And I thought, how in the world can this happen and what can we do in order to prevent this? So I'm just going to quote a couple of figures from Mothers Against Drunk Drivers, and I don't have a reason to doubt their statistics here. They say that research shows that first-time offenders arrested for drunk driving have driven drunk more than 87 times before their first arrest. They also indicate that 50-75 percent of drunk drivers whose licenses are suspended continue to drive. It also says

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the U.S. loses \$116 billion annually to drinking and driving accidents, and states pay millions of dollars annually to incarcerate DUI offenders. So the use of this device can serve a public good in terms of keeping people from being incarcerated because they won't be able to drive their vehicle. It will save lives, and I believe it's the right thing to do, and I thank Senator Fulton for bringing the bill forward and I do support it. Thank you. [LB736 LB609 LB1094]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Stuthman, you're recognized. [LB736]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. In looking over the bill and trying to think back what we did a couple years ago and serving on the Transportation Committee, we did pass a bill and it was signed by the Governor, October 13, 2006. And I will read you the portion of this bill, what it states. "In addition to the restrictions required by subdivision (1)(b) of this section, the court may require a person convicted of a second or subsequent violation of this section to use a continuous alcohol monitoring device and abstain from alcohol use for a period of time not to exceed the maximum term of license revocation ordered by the court. A continuous alcohol monitoring device shall not be ordered for a person convicted for a second or subsequent violation unless the installation of an ignition interlock device is also required." So we did discuss this and we did debate that. The thing that I am concerned about is, we have this in place already for the second and third or subsequent convictions of driving under the influence, but has it ever been used? And maybe I will direct a question to Senator Friend. This was Senator Friend's bill. [LB736]

SENATOR LANGEMEIER: Senator Friend, would you yield to a question from Senator Stuthman? [LB736]

SENATOR FRIEND: Yes, I will. [LB736]

SENATOR STUTHMAN: Senator Friend, this was your bill in 2006. Do you...are you aware of any time that the courts have ordered this device to be used? [LB736]

SENATOR FRIEND: And you're talking about...and I was involved in something else, and I'm sorry. You surprised me with the question. But you're talking about the ankle bracelets? My bill in 2006 dealt with monitors, so I'm a little confused...the interlocking devices, there were provisions in the bill that included measures that would require interlocking devices but most of it was...I'm guessing, Senator Stuthman, that most of it dealt with those ankle bracelets, if I'm not mistaken. And the thing is, the answer to your question is, no, I don't have a lot of data that would indicate to me that either of those items have been an overwhelming success. [LB736]

SENATOR STUTHMAN: Well, the thing that concerns me--and thank you, Senator

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Friend--is the fact that, you know, unless an installation of an ignition interlock device is also required. So the judges could require that with this present law, what we have on the books right now. The judges could require that there's an installation of an ignition interlock device. And it would be for the second and subsequent violations. So we have something in place already but it's not being utilized. I don't want to see these drunk drivers out on the road either. But here we have a bill that was signed by the Governor, April 13, 2006, stating that for the second or subsequent violations there could be an installation of an ignition interlock device required. And that would be required by the judge, could require that. They could do that right now. So that's a concern that I have. We have something in place. We probably still have these, you know, second and third offense people driving around, what we're trying to stop right now. And we've tried to do that already. [LB736]

SENATOR LANGEMEIER: One minute. [LB736]

SENATOR STUTHMAN: And we maybe haven't done...haven't accomplished the goal. You know, it's not that I don't...that I'm not concerned about people, you know, the safety of people because there's a drunk driver. But I'm looking at the issue that we have presently on the books and we're not utilizing it. So if this one passes, what's going to happen then? That's a concern that I have. Thank you, Mr. President. [LB736]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Seeing no other...Senator Synowiecki, you are recognized. [LB736]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, members. I want to thank Senator Fulton for bringing the bill and to thank Senator Carlson for the prioritization designation. I think I might ask Senator Fulton these questions, if I can. [LB736]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB736]

SENATOR FULTON: Yes. [LB736]

SENATOR SYNOWIECKI: Senator, again, thanks for bringing this. Can I just get kind of a thumbnail here? We're reducing the degree and depth of the suspension but requiring the device in the vehicle. Is that kind of what we're doing here? [LB736]

SENATOR FULTON: Yeah, basically. The idea here is to apply these ignition interlocks on first offense. Given the statistics that we've seen in other states, we know it reduces recidivism. So basically, yeah, what you're saying. We're reducing revocation times and implementing a time by which one could get an ignition interlock through this permit process. [LB736]

SENATOR SYNOWIECKI: In reading the bill, it looks like we're removing the discretion

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from the court, indicating they shall order this installation. Is that correct? [LB736]

SENATOR FULTON: On first offense, correct. [LB736]

SENATOR SYNOWIECKI: I notice here on page 18 of the committee amendment, we differentiate between an order of suspension and impoundment. Can you add some clarity to that and why we're doing that? [LB736]

SENATOR FULTON: Yeah, that's a good question, Senator Synowiecki. The difference between impounding one's license and revoking one's license--or I think the language is actually... [LB736]

SENATOR SYNOWIECKI: Impoundment and revocation. [LB736]

SENATOR FULTON: Yeah, right. With impoundment, basically it's taking the license and...oh, I think the euphemism is putting it in the drawer. So you're not revoking one's license, you're taking the license such that the person can't utilize it. Okay? With revocation, it's actually revoking the license, taking it away completely. And with revocation, there is actually a requirement that in order to get a new license, in order to be reinstated such that one could drive, one would have to get a new license, whereas when one has finished an impoundment period they simply return the license to the person. So that's the main difference. [LB736]

SENATOR SYNOWIECKI: Thank you for that. One more question, Senator Fulton. I had numerous conversations with you and with the committee chairperson. I know you worked very hard on this bill. I know you worked very closely with the Judiciary Committee Chairperson because I sit right here. I've been observing your communications. But my question is, relative to the administrative license revocation procedure, as I've voiced to you that there's some complications and some problems, and we have offenders that don't really know that process. Defense attorneys generally don't like it. Prosecutors generally don't like it. Probation officers generally don't like it. But yet, it just seems to keep on hanging on into our criminal justice system. And I shared with you off the mike that my hope is that your bill could perhaps be a vehicle whereby we can arrive at some bypass from the administrative license revocation procedure. I'm assuming that we were unable to achieve that? [LB736]

SENATOR FULTON: Yeah, that's...you're correct in that assumption. What we...well, like you said, there was a lot of time that we put into the bill. A lot of parties had interest in the bill and that really is reflective in the form of AM2148. We chose to work under the existing structures that we have in place. That's a choice that we made to move forward with it. And you know, I'm open to continuing discussion and dialogue with you on the administrative side of this because, you know, frankly it can be confusing. There is an administrative as well as a criminal side to this bill and to our policy in general. So...but

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what we did was we chose to work within the existing framework and structure with the intent and interest of getting this bill forward such that we could save some lives. [LB736]

SENATOR SYNOWIECKI: Okay. Thank you, Senator. Appreciate it. [LB736]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Senator Pirsch, you're recognized. [LB736]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Fulton would yield to just a couple more clarifying questions. [LB736]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB736]

SENATOR FULTON: Yes. [LB736]

SENATOR PIRSCH: Thanks a lot. I guess my...tell me if I'm incorrect here. This change in the bill, encapsulated in the bill here today, would affect only cases of first offense driving under the influence. [LB736]

SENATOR FULTON: Yes. The impetus for this bill is to employ ignition interlock on first offenders. [LB736]

SENATOR PIRSCH: Okay. So it doesn't affect DUI second offenders or multiple higher than that, correct? [LB736]

SENATOR FULTON: Yeah. That's true. I do want to make a clarification, and this is something that Senator Carlson touched on. There's language that I have learned through this process to be very clear in language--offender versus one who has been convicted versus one who has driven drunk. And basically what we had learned, it was a study by the CDC and NHTSA which indicated that those who have...those first offenders or those who have been found to be a first offender actually have driven drunk 87 times. So you're correct, Senator Pirsch. I just want to be sure that people understand that there is a difference between one, a conviction and an offense, etcetera. [LB736]

SENATOR PIRSCH: Sure. I do appreciate that clarification. Again, this affects only those individuals who are convicted of DUI first offenses. And then looking at the sentencing for those individuals in the past under current law, there's two subcategories: those who test over .08 but below .15, and then those who test over .15. Could you explain how your bill treats those two different categories with respect to...? Well, let me ask you, first, a preliminary question. Does this interlock requirement only come into play when an individual is sentenced to probation as opposed to jail time, straight jail

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time? [LB736]

SENATOR FULTON: Well, there's...no. There's also the fact of offense. And I'll check. There's the offender...there's offense and conviction. And so this actually comes to play for both a first offense or first conviction. So it's important to understand there is a clarification. The administrative side of things, that's just the offense. Later on in the process if that person is indeed convicted, then there is a separate criminal part of statute which deals with that. So this does apply to first offenders, but it also applies to those who have been convicted for a first time also. [LB736]

SENATOR PIRSCH: I see. When you're referring to using the terminology "offender," are you referring to the administrative license revocation process then? [LB736]

SENATOR FULTON: Yeah. That's an appropriate way. That's a good way to keep these ideas separated, yeah. [LB736]

SENATOR PIRSCH: Okay. And just for clarification for the body as a whole, two separate bad things happen to you when you're stopped for drunk driving, one of which comes through the criminal courts through the existence of criminal penalties for that. A different, separate thing happens to you, not through the criminal courts but through, and in a civil sense, the Department of Motor Vehicles. Is that correct? [LB736]

SENATOR FULTON: That's correct. [LB736]

SENATOR PIRSCH: Okay. And typically what happens, somebody stops...an officer stops somebody and arrests them for driving drunk. They're given a temporary license with a hearing date for the administrative license revocation. Is that correct, the civil proceeding first? [LB736]

SENATOR FULTON: Yes, that's my understanding. You're correct. [LB736]

SENATOR LANGEMEIER: One minute. [LB736]

SENATOR PIRSCH: Okay. And oftentimes nowadays the results of that hearing, which could be completed by the time the individual reaches the criminal...first step in the criminal process, the arraignment. Is that correct? [LB736]

SENATOR FULTON: It could be, yes. And I don't know what is standard practice. I think they try to do this on the administrative side within 30 days because...and we'd like to see it done, in that case, in that time period because that's how we've constructed the ignition interlock, to be applicable after 30 days. But yes, it could be completed before the criminal process occurs. That is possible. [LB736]

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SENATOR PIRSCH: Okay. And if you could just step me through then, because it looks like we're talking about this interlock affecting both the ALR process as well as the criminal... [LB736]

SENATOR LANGEMEIER: Time. Thank you, Senator Pirsch. (Visitors introduced.) Returning to floor discussion on AM2148 offered to LB736. Those wishing to speak are Senator Stuthman and Senator Louden. Senator Stuthman, you're recognized. [LB736]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to ask a couple questions of Senator Fulton. [LB736]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB736]

SENATOR STUTHMAN: As he's circling the table. [LB736]

SENATOR FULTON: I will yield. [LB736]

SENATOR STUTHMAN: Senator Fulton, I've got the fiscal note right now with me. And the way I understand it, there's a possibility that we could lose \$5.7 million if the original bill was enacted. But since we have the committee amendment, does that take place of it? Explain that to me a little bit. [LB736]

SENATOR FULTON: Yeah. And just for my clarification, I don't have the fiscal note sitting in front of me. The fiscal note, you're referring to the federal funds, correct? [LB736]

SENATOR STUTHMAN: Yes, yes. [LB736]

SENATOR FULTON: Okay, yeah. What exists at the federal level...and this incidentally is what...this is why we're applying this to first offenses and why it's important to apply to first offenses. The federal level for a repeat offending drunk driver, the federal level requires states to have a one-year hard revocation. And if that isn't the case on a repeat offending drunk driver, then we run the risk of losing federal funds. So with the amended...this AM2148 addresses that. So we are going to focus on first offenders here in AM2148 and LB736. And if the feds make a change, I understand there is a pending amendment or there's...I don't know if it's a pending amendment. It's probably more accurate to say that there is going to be a decision that we will learn from the federal level. Then perhaps in the future we can come back for second or repeat offenders. But at this point, at the federal level, a second offender, a repeat offender has to have one year of license revocation. That's addressed in AM2148. So we will not lose funds, federal funds, if we can implement AM2148. [LB736]

SENATOR STUTHMAN: Okay. Thank you, Senator Fulton. In one of the paragraphs, it

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does state that this \$5.7 million would show as a federal revenue reduction at the Nebraska Department of Roads and a federal revenue gain at the Department of Motor Vehicles. So we're really not gaining anything. It's putting it into another fund, correct? [LB736]

SENATOR FULTON: Senator Fischer might call it a loss. But yeah, that's...the way we understand it, those funds wouldn't be lost to the state of Nebraska. They would be lost to the Department of Roads, but then switched over to the...there's a safety fund within the Department of Motor Vehicles. So that's what would happen if we did not implement AM2148. And so that's why we...that's why the committee has put forward AM2148, so that we don't have to worry about the potentiality of losing any federal funds. [LB736]

SENATOR STUTHMAN: No, we would be not losing any federal funds, but we would be not gaining the \$5.7 million to the Department of Roads. [LB736]

SENATOR FULTON: Right. [LB736]

SENATOR STUTHMAN: But that same amount would come to the Department of Motor Vehicles, in other words. [LB736]

SENATOR FULTON: That's correct. [LB736]

SENATOR STUTHMAN: Okay. Thank you. That answers the questions on that. Senator Fulton, are you aware of the bill that was introduced two years or passed two years on the second and third offense part of it? [LB736]

SENATOR FULTON: I can't say that I am. No, Senator Stuthman. [LB736]

SENATOR STUTHMAN: And that is a concern that I have because the judges could require those ignition interlock devices to be placed in vehicles and order the person to have this device. That could all take place at the present time. And I'm concerned that, you know, if it could take place and we are concerned about drunk drivers on the road, why aren't the judges doing this to keep those people off of the road. We have that in place already. So thank you. [LB736]

SENATOR LANGEMEIER: One minute. Oh, thank you, Senator Stuthman. Senator Louden, you're recognized. [LB736]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I was wondering if Senator Fulton would yield for some questions if he would, please. [LB736]

SENATOR LANGEMEIER: Senator Fulton, would you yield? [LB736]

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SENATOR FULTON: Yes. [LB736]

SENATOR LOUDEN: The questions I have, Senator Fulton, as Senator Stuthman has stated that there is probably legislation now, and I know these have been used...several years ago these have been used by some of the judges, whether they were mandatory or whether they were permitted to use these so that people could drive when they lived out in some rural areas. I guess my question is, in order to get somebody else to blow in the thing and start the car, then this would result by your bill into a Class IV felony. Is that correct? I mean, that's what you've added to it that wasn't in law before. That's new law, is that correct? [LB736]

SENATOR FULTON: Can you point where you're looking, just to help me...? Are you in the amendment right now? [LB736]

SENATOR LOUDEN: Yeah. I think, what, page 34 or something. It says about 15 years if you tamper with it or something like that...equipped with...device without obtaining an ignition interlock permit or something like that. And that is new language that wasn't in legislation before? [LB736]

SENATOR FULTON: Actually, let's see, you're referring to line 23, page 34? [LB736]

SENATOR LOUDEN: 22 and 23, yeah. [LB736]

SENATOR FULTON: Okay. The Class IV felony, that's existing language. What we are adding, if one were to tamper to operate a motor vehicle without ignition interlock after having been told that he has to after having that mandated by the state or the judiciary, presently they'd be guilty of a Class IV felony. In our bill we are adding the provision of an ignition interlock permit. [LB736]

SENATOR LOUDEN: Okay. [LB736]

SENATOR FULTON: Okay. So that's actually...that's what we're adding. But the Class IV felony part is actually existing. [LB736]

SENATOR LOUDEN: Well, what I'm...the reason...I've known of instances where, like Senator Stuthman said, they've been in use for, oh, maybe seven or eight years or longer. And I've known in cases where when they got ready to go home in the evening, somebody else had to go out there and blow in the outfit to get the car started. And then they went ahead and drove home. I'm wondering what is in the bill to address that problem and if there is anything different or if that's just a way of life and that's the way it's going to happen. [LB736]

SENATOR FULTON: Well, within the bill specifically, the penalties remain, okay? And

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the penalties were there before. What we have...and really what was exciting about this bill is that we have better technology. Right now, the ignition interlock providers...for instance, the situation you brought forward. And it's actually kind of fun to sit there and think of all the different ways that one could beat an ignition interlock device. You know, I'm an engineer. I sat there and thought of all the ways you could do this. [LB736]

SENATOR LOUDEN: Well, and that leads me to the next question. What about a family that just has one car? Now, can other people in the family drive this car with that interlock device or how is that handled? Because I've run across this many a time. Somebody would get drunk like that when they would impound the cars at times, and actually that took care of the car that the rest of the family used to get to work with. And how is that addressed in your bill if other family members need to use that car? [LB736]

SENATOR FULTON: Well, they would simply have to blow. This ignition interlock device is basically a Breathalyzer that's implemented into the ignition of the vehicle. And so anyone who operates that particular vehicle would need to unlock the vehicle's ignition by blowing. [LB736]

SENATOR LOUDEN: Okay. [LB736]

SENATOR FULTON: And then would have to blow without having any alcohol on his breath. [LB736]

SENATOR LOUDEN: Okay. And that would be on the car and the rest of the family members would have to go through the process of blowing in the outfit in order to make the thing work? [LB736]

PRESIDENT SHEEHY PRESIDING [LB736]

PRESIDENT SHEEHY: One minute. [LB736]

SENATOR FULTON: Yeah. [LB736]

SENATOR LOUDEN: Okay. And that's...now on your bill, have you made it...the difference, you've made it mandatory for...is that correct? First and second offense would have to have these ignition interlocks? [LB736]

SENATOR FULTON: First offense. [LB736]

SENATOR LOUDEN: First offense, okay. And from then on. And that's some of the things that have been changed in this bill that wasn't in there previously? Okay. [LB736]

SENATOR FULTON: Yes. [LB736]

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SENATOR LOUDEN: Okay. That was some of my questions. I think I can support the bill because we already have this, I thought, in statute someplace, as Senator Stuthman has said. Because I know they've been used for several years. I don't know if they were always used on first offense, but I do know they were used similar to a work-release program on people that were first offense drunken driving, and it can be done on something like that where people...you can't hardly incarcerate them because they do have to make a living and sometimes... [LB736]

PRESIDENT SHEEHY: Time, Senator. [LB736]

SENATOR LOUDEN: ...it was a first offense or so. So with that, thank you, Mr. President. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Nelson, followed by Senator Stuthman. Senator Nelson, you are recognized. [LB736]

SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Ashford yield to a question, please? [LB736]

PRESIDENT SHEEHY: Senator Ashford, would you yield? [LB736]

SENATOR ASHFORD: Yes. [LB736]

SENATOR NELSON: Senator Ashford, you've had it entirely too easy for the last half an hour here. I just have a simple question on the amendments, the committee amendments. Reading off of the committee statement there, Section 1, it states that--it's dark in here--it states that an IIP cannot be used to operate a commercial motor vehicle. [LB736]

SENATOR ASHFORD: Correct. [LB736]

SENATOR NELSON: If we're trying to get people to work, back and forth, I'm just curious about why that's in there. [LB736]

SENATOR ASHFORD: That's a federal...that's a compliance issue, Senator Nelson. [LB736]

SENATOR NELSON: A compliance issue? [LB736]

SENATOR ASHFORD: And it does...and we were able to get people back and forth from work, but not driving during their work if it's a commercial license. So it would not apply to a commercial license. [LB736]

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SENATOR NELSON: All right, all right. Thank you very much, Senator Ashford. Would Senator Fulton yield to a question, please? [LB736]

PRESIDENT SHEEHY: Senator Fulton, would you yield to a question from Senator Nelson? [LB736]

SENATOR FULTON: Yes. [LB736]

SENATOR NELSON: Senator, I really commend you on bringing this bill and trying to wade through all the provisions here. I was looking at some of the material that you furnished and I'm interested in the cost of this and how that works. I see figures, it will cost the offender like \$2.25 a day or up to \$3. Are they leasing this interlock device? [LB736]

SENATOR FULTON: Yes. There is the installation and then there is a continuous lease. And it would actually be a lease for the period of one's revocation. So we're talking about six months. And those figures...well, go ahead. To answer your question, the answer is yes, it's a lease. [LB736]

SENATOR NELSON: Well, that's going to come anywhere to \$60 to \$90 a month for a six-month period. And that's calibrated, for want of a better word, to include the initial installation cost and the removal, or is that a separate charge? [LB736]

SENATOR FULTON: The initial installation is in the neighborhood of \$75. And you'll have to understand there are different manufacturers. It's still a competitive market out there. And so \$75 is about average for the installation and then approximately \$75 per month. [LB736]

SENATOR NELSON: \$75 per month after that? [LB736]

SENATOR FULTON: Correct. [LB736]

SENATOR NELSON: And then they have to come in and remove it, take it off, and there's a cost to that. [LB736]

SENATOR FULTON: And I do not believe there's a cost for that. [LB736]

SENATOR NELSON: Oh, okay. [LB736]

SENATOR FULTON: At least there's typically not a cost for that. [LB736]

SENATOR NELSON: Now your bill provides, in the case of indigency, that it will be paid

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by the state out of what, the Department of Motor Vehicles or...? [LB736]

SENATOR FULTON: Yeah. I'll tell you, by way of principle and the pragmatics, actually how it gets accomplished. In principle, I'd like to structure this such that we have the offenders, the nonindigent offenders paying for the indigent offenders. So in principle, the way this plays out actually is we have an indigent fund that would be funded. And the way that AM2148 would lay out is that there is a fee to be collected for this indigent fund, so...and that fee would not to exceed \$50. Just FYI, Senator, in other states there is a...this is a similar way. We actually kind of mimicked this out of Texas and New Mexico, so that's where we got the idea. [LB736]

SENATOR NELSON: All right. And then would the person who claims to be indigent have to do an affidavit of some sort like we do in other matters before the court? How is that determined? [LB736]

SENATOR FULTON: I am not positive about that. The...well, and we're not addressing statutorily the definition of indigent,... [LB736]

PRESIDENT SHEEHY: One minute. [LB736]

SENATOR FULTON: ...and so that definition or that mechanism by which one would be indigent now is not going to change under our bill. [LB736]

SENATOR NELSON: All right. All right. Thank you very much. That concludes my questions. Thank you, Mr. President. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Stuthman, you're recognized for your third time on AM2148. [LB736]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I just want to get on the record that, you know, I'm very much concerned about drunk drivers on the road and I do not want to see anybody, you know, having to have great bodily injury or death just because of a drunk driver on the road. But the situation that I'm concerned with is that we have something already in place that could take care of this, the majority of it, and we're not utilizing it. The judges are not utilizing that part of it. They're not demanding that, and that's a concern that I have. I mean, we debated this long and hard two years ago and we put something into place. And I don't know of it ever being enforced. That is a concern that I have. So with that, thank you, Lieutenant Governor. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Kruse, you're recognized. [LB736]

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SENATOR KRUSE: Thank you, Mr. President and colleagues. I want to make a quick response to Senator Stuthman, who's raising the question about the present interlock. That and this are very different. There was very little enforcement on that. It was optional all the way around. This is quite a different approach to the interlock. Thank you. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Are there additional members wishing to speak on AM2148? Seeing none, Senator Ashford, you're recognized to close. [LB736]

SENATOR ASHFORD: Yeah, thanks, Mr. President. Senator Fulton, in answering the questions that have been posed to him, has really outlined the committee amendments as well. Obviously what we're trying to do here...and in response to Senator Stuthman, the discretionary utilization of interlocks is in statute. This carries the interlock device option certainly probably several steps further. It deals with first offense, subsequent offenses, when an ignition interlock device can be utilized. It deals with the ALR situation that I know Senator Synowiecki is involved in. It gives people an opportunity to drive in all these circumstances. The courts are involved. There's no automatic granting of ignition interlock. The court would have the opportunity to review each case, whether it's first offense, second offense, third offense, whatever it is. And I think Senator Carlson said it very appropriately. What I think the public gets very concerned about--I do--is when you read in the paper about someone with a fifth offense or sixth offense or whatever it is. The recidivism is an issue. This is a, in my view, is a constructive way to handle recidivism in the DUI cases. With that, there...and also Senator Fulton did, in response to Senator Nelson, talk about the indigent fund which is covered in the bill. And then finally, again, the committee amendments primarily change the green copy to ensure that federal funds are secure, primarily making certain that the ignition interlock options are not so lenient that they violate the standards in federal law. With that, Mr. President, I would urge the adoption of the amendment. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the closing to the Judiciary Committee amendment, AM2148. The question before the body is, shall AM2148 be adopted to LB736? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB736]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB736]

PRESIDENT SHEEHY: AM2148 is adopted. We'll return now to floor discussion on the advancement of LB736. Are there members wishing to speak on this bill? Seeing none, Senator Fulton, you're recognized to close. [LB736]

SENATOR FULTON: Thank you, Mr. President. I'm going to take this opportunity to

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address that fun little enterprise that my staff and I engaged in: how do you beat the ignition interlock? We all know that there will be people who will want to beat it. But there were some questions asked that I didn't get to respond to. The way that these ignition interlock devices work now, they're actually...if someone wants to get someone else to blow for them, these ignition interlocks actually have cameras now similar to what you'd see...the technology is similar to technology that you'd have in a Web cam presently. It's not terribly expensive, it's not terribly involved. It can sit up behind the dash and it takes a picture when you blow. And so if someone is trying to fool, in that regard, they're going to have a hard time because there's a picture taken. What happens when someone gets in the car, goes down to the bar, has some drinks but leaves their car running? Well, these ignition interlock devices have random rolling tests. And so at random times there has to be another test, another blow. And so there are mechanisms in place as technology has proliferated to address some of these concerns. And I'd be glad to tell you some of the other nuances that exist in order to beat those who want to cheat the system. We brought this bill, LB736, really in response to what really is outrageous in society today, and that's reading how a repeat offending drunk driver cuts somebody's life short. It happened here last summer here in Lincoln. It was a young man whose life was cut short in north Lincoln by a drunk driver who didn't have his license and who had been a fifth or maybe sixth repeat offender. That's wrong. That shouldn't happen. It's a scandal that that happens. And so we brought this bill as a way to address the benefit of public safety. So I ask you to advance this bill, LB736, as amended to Select File. We've studied this, we've worked on it very hard. If you have any questions or concerns, please come to me and let's work on it on Select File and let's put this law forward such that we can save lives in the state of Nebraska. Thank you, Mr. President. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the closing. The question before the body is on the advancement of LB736. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB736]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB736]

PRESIDENT SHEEHY: LB736 advances. We'll move to next item under General File. [LB736]

ASSISTANT CLERK: Mr. President, next bill is LB895, which is legislation introduced by Senator Janssen at the request of the Governor. (Read title.) The bill was read for the first time on January 11, referred to the Revenue Committee. That committee reports the bill to General File with committee amendments. (AM2082, Legislative Journal page 716.) [LB895]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Janssen, you're recognized to

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open on LB895. [LB895]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. LB895 would add a new tier of qualification to the Nebraska Advantage Act. The new tier would be for projects that pay at least 150 percent of the state's average weekly wage or 200 percent of the county average, whichever is larger. A later amendment will create a second set of thresholds for qualifying for this new tier and of the benefits. Any business except retail sales of tangible personal property qualifies for tier 6, a broader pool of qualifiers than the current program. Also the number of new jobs would be 75 and the required investment of \$10 million. These thresholds are higher than most tiers but lower than the tier 4 qualifications. Tier 6 qualifiers would receive much higher benefits: a 10 percent job credit and a 15 percent investment credit, compared to the maximum 6 percent job credit and 10 percent investment credit. Qualifiers could also receive an exemption for their personal property at the project compared to the current rather than limited exemptions for some personal property for tier 4 projects. Tier 6 qualifiers would also have longer to earn credits and one year longer to use them. Finally, tier 6 qualifiers could use any credits by obtaining reimbursement for real estate taxes paid anywhere in the state. A later amendment, AM2344, would substantially limit this benefit so that only the real estate acquired or leased in connection with the project would be eligible for this benefit and could be used for this reimbursement. As introduced, LB895 would have cost the state in excess of \$13 million when fully implemented. After the Economic Forecasting Advisory Board lowered the state's revenue forecast last month, the committee met and decided that the cost of LB895 had to come down. As a result, we offered AM2344 that limits the reimbursement of real estate taxes provisions to real estate acquired after the application date and included in the project. This one change lowers the annual fiscal impact from \$13.2 million to \$5.3 million and makes it a better bill. More on the amendment later. First, I will tell you about the committee amendments, which makes some changes to Nebraska Advantage Rural Development Act. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the opening to LB895. As noted, there is a Revenue Committee amendment, AM2082. Senator Janssen, you're recognized to open on AM2082. [LB895]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor. The committee amendments add four sections from LB1033 and LB1046 to the bill. These changes amend the Nebraska Advantage Rural Development Act to eliminate from the definition of livestock modernizations or expansion, which are eligible for benefits, any improvement performed to correct environmental violations that are made within five years of the complaint by the director of the Department of Environmental Quality. Number two, it allows benefits for projects and villages and in counties in this state if the project promises at least two new jobs and at least \$125,000 in new investment. Currently, such small projects must be in counties with a population of 15,000 or less, or

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in an enterprise zone. That would have been under LB1033. Number three, it allows benefits for projects in one or more census tracts located in a metropolitan-class city which have a percentage of residents in poverty greater than 30 percent and any adjacent census tracts if the project promises at least two new jobs and at least \$125,000 in new investment. Currently, these small projects must be in small counties or in an enterprise zone. Since enterprise zone legislation has expired, this amendment would strike references to the enterprise zone and replace these references with a similar poverty-based description. And that is in the revised LB1033. Four, it allows benefits for a project in a second-class city in any county in this state if a project promises at least five new jobs and at least \$250,000 in new investment. Currently, projects in this tier must be in counties with a population of 25,000 or less. Number five, it increases the annual dollar cap for tax credits from \$3 million to \$4 million beginning in the fiscal year 2008-09. The change made in this act by the bill would be effective for applications filed after the effective date of the act. Thank you. [LB895 LB1033 LB1046]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the opening of the Revenue Committee amendment, AM2082. Mr. Clerk, you have an amendment to the committee amendment. [LB895]

ASSISTANT CLERK: Mr. President, the first amendment to the committee amendments is offered by Senator Flood, AM2119. (Legislative Journal page 801.) [LB895]

PRESIDENT SHEEHY: Senator Flood, you're recognized to open on AM2119. [LB895]

SPEAKER FLOOD: Thank you, Mr. President, members. My amendment saves a little money and it's technical in nature. It proposes a basic change to the committee amendment. Under the committee amendment, the Tax Commissioner has a cap of \$4 million in FY '08-09 on applications after the expected credits from the approved projects. Under my further amendment, applications would not be approved after the expected credits total \$3 million in FY '08-09, and for FY '09-10 the credit limit would increase to \$4 million. So in other words, under the committee amendment in '07-08, the cap would be \$3 million; '08-09 and every year thereafter it would be \$4 million. Mine takes that to \$3 million, '07-08; \$3 million, '08-09; and \$4 million, '09-10 and every year after. This proposed change clarifies the changes made in the statute by this bill and become operative for applications filed after July 1, 2009. It is technical in nature. It simply...I guess it reduces the fiscal note by \$1 million and takes it to \$4 million in '09-10. Thank you, Mr. President. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Flood. You have heard the opening to the amendment to the committee amendment, AM2119. Members wishing to speak from the floor are Senator Langemeier. [LB895]

SENATOR LANGEMEIER: Mr. President, members of the body, I rise in support of

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AM2119. The committee members discussed this and we knew it was coming, and we'd ask for your support of AM2119. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Langemeier. Are there additional members wishing to speak on AM2119? Seeing none, Senator Flood, you're recognized to close. Senator Flood waives closing. The question before the body is on the adoption of the amendment to the committee amendment, AM2119 to AM2082. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB895]

ASSISTANT CLERK: 29 ayes, 0 nays on the adoption of Senator Flood's amendment, Mr. President. [LB895]

PRESIDENT SHEEHY: AM2119 is adopted. Mr. Clerk, next amendment to the committee amendment? [LB895]

ASSISTANT CLERK: Mr. President, Senator Janssen would offer AM2344. (Legislative Journal page 981.) [LB895]

PRESIDENT SHEEHY: Senator Janssen, you're recognized to open on AM2344. [LB895]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor. Unlike the committee amendments, AM2344 would change LB895 itself. The most important change is the part I've already talked about. The amendment would limit the availability of the real estate tax refund to property acquired after the application date and used at the project. This single change lowers the fiscal impact by \$8 million, or almost 60 percent. In exchange, the amendment would adopt an expansion to the tier 6 program and the Nebraska Advantage Act itself. First, AM2344 would expand the definition of qualifying business for all tiers in the Nebraska Advantage Act to include developing and operating a Web portal business. This term would be defined to mean an Internet site that allows users to access, search, and navigate the Internet. The amendment also adds a second way to qualify for the tier 6 benefits. Under the green copy, to qualify for the benefits, companies would have to invest at least \$10 million and employ at least 75 high-paying wages. Under this amendment, companies would also qualify by investing at least \$100 million and hiring at least 50 new high-wage employees. To ease the administration of the Nebraska Advantage Act, the Department of Revenue asks that the definition of wages be changed to be like what is proposed in the bill for tier 6. Wages for the purpose of determining whether or not a job meets the wage threshold for qualifying for benefits and also for the amount of wage credits, which means the wage listed on the W-2 form. This includes bonuses and overtime, but excludes health insurance deductions, retirement deductions, or other tax fringe benefits. Currently, wages for the proposed Nebraska Advantage Act is the basic rate of pay which includes bonuses and overtime, but including deductions for qualified fringe benefits. On the whole, this

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change will raise the bar slightly for companies attempting to qualify for the Nebraska Advantage Act benefits. At least for low-wage employees, the fringe benefits are likely to be much larger than any overtime or bonuses that could be counted towards qualification. The same might not be true for high-wage employers. But on the whole, this change simplifies administration of the act while assuring that the beneficiaries under the new tier of LB895 are actually paying higher wages than those qualifying under the other tiers. Another restriction on the current Nebraska Advantage Act beneficiaries is that the compensation to any one individual that is greater than \$1 million would not generate any wage credits. This was a feature proposed for the new tier 6 qualifiers under LB895. And the committee liked the idea so much that AM2344 would extend that exclusion to the rest of the existing act. Finally, the proposed amendment would add the emergency clause. In summary, AM2344 restricts the qualification for benefits and the amount of benefits under the Nebraska Advantage Act under both the current tiers and the new tiers somewhat. It reduces the real estate tax refund considerably, reducing the cost of the bill by 60 percent. It also expands the opportunity for...qualifies somewhat with new qualification thresholds for the new tier 6 and the new definition of qualifying business. On the whole, it improves the bill and I ask for your support of the amendment to the committee amendments. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the amendment to the committee amendment, AM2344. Members wishing to speak: Senator Rogert, you're recognized. [LB895]

SENATOR ROBERT: Thank you, Mr. President, members of the body. I rise in support of AM2344 and the underlying bill, LB895. I want to point out a couple of issues that I've noticed in looking and researching this bill. It may seem to some of you that this is an urban issue that would benefit the state of Nebraska. And I want to beg to differ with that a little bit. Oddly enough, the two highest counties in the state for wages are in my district--Washington County and Stanton County. If this bill was to pass, if...it would be...if jobs were created over \$80,000, both of those counties in my district would benefit. There are also several counties across the state that are in the rural areas that would benefit from this because of their high paying jobs: York County, \$61,212; Saline County, just almost \$62,000; Platte County, because of its manufacturing, \$60,000; Nemaha County, almost \$80,000; Dakota County, \$63,000; Cheyenne County, \$65,000; and Thurston County at just about \$60,000. So I guess my point is, is that if we can attract some of these business to some of these counties and they create jobs that are that high paying, it would be a big benefit for the rural areas of our state. There are some things that this bill does as well. It provides exemptions on all tangible personal property that it didn't in the past, which would help lure high-tech jobs with lots of computers and databases to us--so high-tech, manufacturing, high paying jobs. I rise in support of this bill and it will help rural Nebraska. Thank you, Mr. President. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Rogert. Additional members wishing to

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speak: Senator Cornett, followed by Senator Adams and Senator Raikes. Senator Cornett. [LB895]

SENATOR CORNETT: Yes, thank you, Lieutenant Governor and members of the body. I want the body to be aware of how much the Revenue Committee sat down and reevaluated the original bill to the amendment that we have now. One of the points that was not covered in the opening was that we have reduced the fiscal note down from \$13 million to \$5 million starting in 2010. And we did implement a sunset and the bill will sunset in 2015. We did this as a committee because we felt that it was fiscally responsible to cut the original LB895 down to what it is now, but still meet the needs of what the original intent of the bill was. With that, I urge the body to support the amendment and thank you very much. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Adams. [LB895]

SENATOR ADAMS: Thank you, Mr. President. Not long ago I had received some e-mails, some phone calls from my former colleagues, teachers saying you can't support this bill because it's lost revenue and we need it for teacher salaries, we need it for state aid, and you all know the story. And it just so happened the next day, the Education Committee met early in the morning and we heard a report. And that report was from the Nebraska Coordinating Commission on Postsecondary Education. As we were listening to the report, there was one statistic that really stuck out to me. And I won't give you numbers but in principle here's what's happening, and it's no revelation to any of you. In Nebraska, we are importing more people with some or less college education and we are exporting far more with that college education. They're going away. Now we can probably stand here all evening and project as to why they're going. But one of the things on the list has to be the fact that they've gone off, they've gotten themselves an advanced degree, they anticipate high wages. And thought they might like to stay in their home state, maybe even like to go back to the community they grew up in, the reality is the job isn't there at the wage levels that they're anticipating. Now this particular bill I don't know is going to guarantee every college graduate (laugh) in Nebraska an opportunity at a higher wage, but it does something to attract those kids back. And I'm going to preach to the choir here for just a second. Thirty-one years of having seniors in class, and every year right about this time is graduation time. And they always said I'm getting out of here, I'm getting out of York, I'm getting out of Nebraska. And I'd say get going--go. You're at the age, go spread your wings, see what's out there. But the day will come, the day will come when you're going to look back. You're going to look back at the Yorks and the Scottsbluffs and the Lincolns and the Columbuses and say, you know what, I wouldn't mind going back to that community. I wouldn't mind raising kids there because I know what the community is like, I know what the schools are like. But the problem is, I'm an engineer--or name a hundred other professions that warrant a high salary--and typically those things aren't available in Nebraska. This is a step in the right direction at making that attraction. So I can say to

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my teacher colleagues, you're educating these kids and you're educating them to go out and get good, high paying jobs. Why wouldn't we want to support this so that we can maybe attract them back? Thank you, Mr. President. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Adams. Senator Raikes, you're recognized. [LB895]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I'm going to support this amendment. One of the main reasons is that without this amendment, the fiscal note on the bill is \$13 million; with the amendment it's a little over \$5 million. So that's, I think, the basic reason for my support. Even though it reduces it to \$5 million, it still is \$5 million. I did not support this in committee. And ironically, although I appreciate the points that have been made, what you're doing with this bill is you are exempting from taxation those who are most able to pay taxes. And I guess probably you always do that to a certain extent with these business tax incentive programs. But there's something that kind of rubs the wrong way about that, that we've got the highest income people, the people who are most able to bear the burden of the cost of public service, and we're saying we're exempting those people. I, generally speaking, don't think that's a good idea. I'll mention one other thing. There's of course a lot of concern that we're facing a possible recession. We went through this since I've been here, which is a long time, once before. And one of the interesting things when you get into a recession, you can cut public schools. Public schools are, in effect, a child of the state. So they have no special protection. You can cut them, and believe me, we did. And in fact, we're about the same thing right now. On the other hand, if it's a business tax incentive program, keep your hands off of it. No matter how much the fiscal impact, you can't touch it. It's an arm's length agreement. You are locked into it. So I would just offer this warning: As you're facing potentially hard times, these sorts of commitments are ones that you cannot back away from. You are stuck with this. This is...it's not only been this sort of a business tax incentive program, but the ethanol incentive programs were the same way. We were stuck not only through hard times, but we were stuck even though people operating the ethanol plants really didn't need the money. They were making money hand over fist without it. So those are things I think you need to keep in mind. I'll mention one other thing. You'll hear, well, the fiscal note is wrong, that actually this is going to make us money. At one point we had as a part of our toolkit a couple of economic models that dealt specifically...in fact, were designed to analyze these types of programs from the standpoint of exactly how does the state and its taxpayers come out on this deal. Well, I can remember doing runs on many, many different proposals in the way of tax incentive programs. I might remember one that broke even. All the rest of them were losers. The idea that somehow there is a perpetual motion machine here or something that looks like it's costing money but actually it really makes money is simply not true. It's not borne out. These are costs. These programs cost. So don't be misled in a time when you're facing potentially a recession. This, if this is adopted, this is a program that is going to reduce revenues to the state. It will cost. So again, I urge the

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adoption of this amendment because it cuts down on the size of the loss. [LB895]

PRESIDENT SHEEHY: One minute. [LB895]

SENATOR RAIKES: But I don't support the bill because of the reasons I mentioned. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Louden, followed by Senator Wallman. Senator Louden. [LB895]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator Janssen yield for some questions, please? [LB895]

PRESIDENT SHEEHY: Senator Janssen, would you yield to questions? [LB895]

SENATOR JANSSEN: Yes. [LB895]

SENATOR LOUDEN: As I looked at some of your comparisons here on the proposals, and of course I see where there's property tax exemption on here. And if I remember back in about 2003 or so when we were having a lot of trouble with shortage of money around here, that was some of the problems, was some of these school districts, there was tax incentive, people...or there was tax incentive businesses put in there. And then when they got there, of course, they needed schools, they needed facilities. And then property tax was exempt and consequently their basis was gone for taxation. How is that addressed in this? I mean, are we turning around and doing the same thing all over again that we did with some of that stuff before? And I'm wondering what the difference between this and probably LB775 was or something like that, other than you're talking about high-dollar people. [LB895]

SENATOR JANSSEN: Senator Louden, no, it isn't the same as it was. If I get this right, they reimburse those back to the local entities. If I'm wrong, I will hear from counsel. But that's the answer. [LB895]

SENATOR LOUDEN: Okay. Then where you exempt that property tax, who picks that property tax up? Because I mean, I understand that you probably figure there are going to be some high-dollar wages paid and there will be some income tax paid. But if it happens to be close to a state line or something, those people may live in the other state and drive back and forth. So their income tax may not be paid there. So I'm wondering who picks up that...when you give a property tax exemption, that's local people; that's county, city, and that sort of thing. And then we sit here and state level and exempt somebody else's income. And I'm wondering, you know, how that's handled here different than what's been done before. [LB895]

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SENATOR JANSSEN: Senator, the property tax portion does...the state picks that up to the local entities; school districts and the counties, so on. [LB895]

SENATOR LOUDEN: Okay. Thank you, Senator Janssen. I guess I've gotten an answer out of it. But that's always my concern when we start doing something here on the state level for an incentive for businesses and then we come up with a...we give a property tax exemption. That's giving somebody else's money away. And somewhere another I would like to see how we pick that back up and reimburse that local entity for the property tax that they won't receive. So with that, I'll see what comes up of the situation here and listen to the debate and the dialogue to see if you can answer my question. Thank you, Senator Janssen. Thank you, Mr. President. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Wallman, you're recognized. [LB895]

SENATOR WALLMAN: Thank you, Mr. President. And I appreciate that dialogue with Senator Louden and also with Senator Janssen. And this property tax issue, it does affect local...like in my place, my area they've got a huge ethanol plant and they took a lot of land off the property tax. So it did affect the property tax in my school district area. So you know, I appreciate what Ron Raikes said. You know, it will affect the budget some. When will it pay back? We know it takes a long time. I do appreciate good jobs. But you know, it kind of sticks bad in my throat to vote for something like this. And yet, you can't be against business incentives as such. But I wish there was a different mechanism that we could do this so if they did start making big money that it would be a sunset, and immediately that incentive would be gone. So...because otherwise it gets pretty loose. So with that, thank you, Mr. President. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Seeing no additional lights on, Senator Janssen, you're recognized to close. [LB895]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor. I believe the committee amendments will address some of the concerns that we have and I ask for your advancement of the amendments to the committee amendments. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the closing. The question before the body is, shall AM2344 be adopted to AM2082? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB895]

ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of Senator Janssen's amendment. [LB895]

PRESIDENT SHEEHY: AM2344 is adopted. We'll move to the next amendment to the committee amendment, Mr. Clerk. [LB895]

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ASSISTANT CLERK: Senator Dierks would offer AM2131. [LB895]

PRESIDENT SHEEHY: Senator Dierks, you're recognized to open on AM2131. [LB895]

SENATOR DIERKS: Mr. President, I'd like to withdraw that amendment. [LB895]

PRESIDENT SHEEHY: AM2131 is withdrawn. We will return to floor debate on the Revenue Committee amendment, AM2082. Members wishing to speak? Seeing none, Senator Janssen, you're recognized to close. [LB895]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor. The committee amendments do refine the bill, make it a more palatable bill, and I ask for the adoption of AM2082. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the closing. The question before the body is, shall AM2082 be adopted to LB895? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB895]

ASSISTANT CLERK: 39 ayes, 0 nays on the adoption of the committee amendments, Mr. President. [LB895]

PRESIDENT SHEEHY: AM2082 is adopted. We will go to discussion on the advancement of LB895. Seeing no lights on, Senator Janssen, you're recognized to close. [LB895]

SENATOR JANSSEN: Only that I believe we've worked hard on the bill. We've got it, in my opinion. It's reasonable and there is a sunset provision so a future legislator can come back and address it if they don't think it's doing what I think it will do. With that, I ask for your advancement of LB895. Thank you. [LB895]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the closing. The question before the body is on the advancement of LB895. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB895]

ASSISTANT CLERK: 35 ayes, 4 nays on the motion to advance the bill, Mr. President. [LB895]

PRESIDENT SHEEHY: LB895 advances. Mr. Clerk, do you have items for the record? [LB895]

ASSISTANT CLERK: Not at this time, Mr. President.

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PRESIDENT SHEEHY: Next item under General File, Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB1022 offered by Senator Hansen. (Read title.) The bill was read for the first time on January 17 of this year, referred to the Committee on Health and Human Services, which reports the bill to General File with committee amendments. (AM2085, Legislative Journal page 922.) [LB1022]

PRESIDENT SHEEHY: Senator Hansen, you're recognized to open on LB1022. [LB1022]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. This bill was initiated by the people who it will regulate, and it will regulate those who distribute veterinary legend drugs. A veterinary legend drug is a prescription drug for livestock. The purpose of LB1022 is to create a licensure program that provides statutory structure, oversight, and accountability for a person or entities who distribute veterinary drugs in or into Nebraska. The bill is necessary. Although these entities have distributed veterinary drugs for more than three decades, there is no statutory or regulatory authority to do so. This act will be another tool to assure meat safety for consumers here, throughout the U.S., and around the world. LB1022 gives the Division of Public Health of the Department of Health and Human Services authority to promulgate rules and regulations pursuant to this act; conduct inspections; deny, issue, renew, refuse renewal, suspend, limit, or revoke veterinary drug distribution licenses; and initiate specific disciplinary actions if prohibited activities were committed. Based upon the research provided to me by the industry representatives, there is likely to be 20 to 30 applicants for licensure. The program is a cash funded program and the Department of HHS representatives have told me that staffing is adequate to handle this program. Thank you, and I ask for your vote to advance LB1022. [LB1022]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the opening to LB1022. As noted, we do have a Health and Human Services Committee amendment, AM2085. Senator Johnson, you are recognized to open. [LB1022]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Members of the Legislature, the committee amendment does make technical changes and rewrites two sections of the bill. The amendment rewrites Section 16 of the bill relating to professional licensure, and Section 18 relating to the denial, refusal to renew, suspension, limitation, or revocation of a veterinary drug distributor license and grounds for such action. The amendment also clarifies that a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act acting within his or her scope of practice is not required to be licensed under the Veterinary Drug Distribution Act. With this, I would ask for the adoption of this amendment and advancement of the bill. I would give the rest of my time to Senator Hansen if there be any further comments. [LB1022]

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PRESIDENT SHEEHY: Senator Hansen, 8 minutes, 50 seconds. [LB1022]

SENATOR HANSEN: Thank you, Senator Johnson. I just, I approve of the amendments. We talked about them. They were suggested by the Nebraska Board of Veterinary Medicine and Surgery at the day of the hearing. They came to us later, we developed the amendments, and I do approve them and I urge your accepting of these amendments, too. Thank you. [LB1022]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the opening to the Health and Human Services Committee amendment, AM2085. Members wishing to speak are Senator Dierks, followed by Senator Louden. Senator Dierks, you're recognized. [LB1022]

SENATOR DIERKS: Thank you, Mr. President. I just wanted to offer my support for both the amendment and the bill. I think this strengthens the Veterinary Practice Act. It makes it more evident that you have to have a veterinary client-patient relationship and you have to have that in place before you can sign prescriptions for...blanket prescriptions for feedlots, for instance. I think this is a wise decision and I support both the amendment and the bill. [LB1022]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Louden, you're recognized. [LB1022]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. Would Senator Hansen yield for questions if he would, please? [LB1022]

PRESIDENT SHEEHY: Senator Hansen, would you yield to questions? [LB1022]

SENATOR HANSEN: Yes, I will. [LB1022]

SENATOR LOUDEN: Senator Hansen, I presume in Section 12 where that describes the drugs that will be governed by this legislation, and that is just drugs that have to be ordered by a licensed veterinarian. And that's all? There aren't any drugs like feed additives or anything else in there or implants that would also be considered under this? [LB1022]

SENATOR HANSEN: Not unless they carry the legend on the product itself and it says that it cannot be used without the prescription of a veterinarian...or the drug used on or...by or on the order of a licensed veterinarian. And that's the legend. That's the story on the bottle, the story on the product. And that's what was understood at the time of the hearing anyway. [LB1022]

SENATOR LOUDEN: Okay. Then for instance like brucellosis vaccine and stuff like that

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where it has to be applied by a veterinarian to be official, this wouldn't be a case where a veterinarian could buy and give the vaccine and somebody else could put that in? That doesn't change any of those rules? [LB1022]

SENATOR HANSEN: I don't...no, it doesn't. This LB1022 does not, definitely does not change those rules. [LB1022]

SENATOR LOUDEN: And any of the drugs or pharmaceuticals that we buy through mail order houses such as you usually get these mail order catalogs all the time about every stuff that you can think of that probably doesn't do any good part of the time, that doesn't affect any of that? You can still buy this stuff that doesn't do any good? [LB1022]

SENATOR HANSEN: According to the pharmacy folks that we talked to, it does not. It has nothing to do with mail order veterinary drugs. [LB1022]

SENATOR LOUDEN: Okay. Thank you, Senator Hansen. As I think my concern has been answered on this, as long as it doesn't interfere with some of the other drugs that are used on a regular basis to...in the livestock work and veterinary work, I have no problem with the bills. So I intend to support it. Thank you, Mr. President. [LB1022]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Dierks, you're recognized. [LB1022]

SENATOR DIERKS: Thank you, Mr. President and members of the body. Senator Louden brings up the point of brucellosis administration. There are certain items that veterinarians have to have federal accreditation for. They have to be federally approved, federally accredited to do brucellosis vaccination, tuberculosis injection, even to write health certificates for animals going across state lines or into other countries. Without that, these things are not possible. And this legislation has nothing to do with federal accreditation. This strictly deals with the veterinary client/patient relationship on prescription items. So the mail order stuff that Senator Louden was talking about is not...if it's a prescription item, they can't do that. But if it's a prescription item, you need to go to a veterinarian and get the prescription signed by that veterinarian. That's one of the good things about this piece of legislation. It tightens up those rules and regs. I think I've covered about everything that I heard from Senator Louden. But I just wanted to make sure you understood that federal accreditation is a little bit different part of veterinary practice and you have to be...veterinarians have to take this test to be federally accredited. And they do that usually at the time they graduate from veterinary school. And that's necessary for a number of things, but mostly for federal programs. With that, I still support everything that Senator Hansen has done here, and I urge your support, as well. Thank you. [LB1022]

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PRESIDENT SHEEHY: Thank you, Senator Dierks. Further members wishing to discuss AM2085? Seeing none, Senator Johnson, you're recognized to close. Senator Johnson waives closing. The question before the body is the adoption of AM2085, Health and Human Services Committee amendment to LB1022. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1022]

ASSISTANT CLERK: 32 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB1022]

PRESIDENT SHEEHY: AM2085 is adopted. We will now return to floor discussion on LB1022. Seeing no one wishing to speak, Senator Hansen, you're recognized to close. [LB1022]

SENATOR HANSEN: Thank you, Mr. President. I'll be very brief. This is an attempt to keep our food safety in top-notch condition in Nebraska as well as the rest of the United States. It's very important to me, very important to my industry that I came from. And I think that with the passage of this we'll have a license out there that folks can be proud of to have and hopefully keep our safety record intact. Thank you, Mr. President. [LB1022]

PRESIDENT SHEEHY: Thank you, Senator Hansen. You have heard the closing. The question before the body is, shall LB1022 advance? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1022]

ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill. [LB1022]

PRESIDENT SHEEHY: LB1022 does advance. Speaker Flood, you're recognized for an announcement. [LB1022]

SPEAKER FLOOD: Thank you, Mr. President, members. And thank you everybody for all of your hard work today. We are going to be quitting for the day and adjourning following the resolution on LB830, which is a bill introduced by Senator Lathrop which is following...which is up now. So just a quick announcement. We will be quitting today after LB830. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, next item under General File.

ASSISTANT CLERK: Mr. President, LB830 was introduced by Senator Lathrop. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Committee on Health and Human Services. That committee reports the bill to General File with committee amendments. (AM2357, Legislative Journal page 1025.) [LB830]

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PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB830. [LB830]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I have a rare opportunity here in the middle of all the rancor over the budget to introduce a bill tonight that saves the state money. And I'm pleased to do that. Before doing that though, I'd like to thank Senator Dubas who's made this her priority bill, and the cooperation and the effort of the Health and Human Services Committee that I've worked with. It has been a pleasure to work with that committee to bring LB830 to the floor and provide you with an opportunity to save the state of Nebraska money. LB830 saves the state of Nebraska millions of dollars of tax money spent each year on Medicaid prescription drugs. Each year the state of Nebraska spends upwards of \$130 million in prescription medication. This bill will permit the state of Nebraska to save anywhere between \$3 million to \$4 million annually on prescription drug medication for Medicaid recipients. A little history would be in order in the introduction of this bill. About three years ago, a task force was put together to examine in what ways the state might save money by taking and implementing cost-saving measures with Medicaid and Medicaid prescription drugs. As a result of that task force, there were a number of recommendations made, one of which was to look at different cost-saving measures that could be implemented that are generally used by insurance companies to save money. That recommendation ultimately led to a report commissioned by our Health and Human Services Committee. That is the Mercer report. The Mercer report was completed in the fall of last year, October of 2007. And basically the Mercer report said a number of things about the way the state of Nebraska purchases drugs and dispenses medication for Medicaid recipients. You should know that the Mercer report was complimentary about a number of things that the state of Nebraska was doing to save money on prescription medication for Medicaid recipients. We have in place a good prior authorization program. We had in place a good program to take advantage of generic medications where possible. Nevertheless, the commission...or the Mercer report suggested a number of ways that the state of Nebraska could save additional dollars in the prescription of...or the dispensing of medication to Medicaid recipients. LB830 does adopt and puts into law two of the recommendations made by the Mercer report, and I'd like to explain those to you. The first is, it requires that the state establish a preferred drug list. A preferred drug list, first of all, is a tool used by insurance companies to save drug costs so the state...and this bill will permit the state of Nebraska to take advantage of tools used by the insurance industry right now in private policies. The preferred drug list is a really simple concept. It basically says the first criteria is, for any malady or any class of drugs, we're going to look for the best drug on the market for a particular malady. And if I can use cholesterol as an example. If the question is which is the best drug for cholesterol medication, a pharmaceutical and therapeutic P&T committee will evaluate which are the best drugs, and we determine what the best drugs are. And then we make them compete by bidding for a lower price to become the drug that is dispensed to Medicaid recipients. That bidding process

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among the best therapeutic medications for each class of drugs results in a savings to the state. That's the preferred drug list. Exempted from the preferred drug list is medications that deal with mental health. That is more of an art. There are an awful lot of side effects making it difficult to say if you have depression you must go on Prozac. So we've carved those out, is the term that is used in these kind of bills. The second tool that will be utilized in LB830 to save the state money on Medicaid drugs is called a...it requires that the state of Nebraska or the director of the Department of Health and Human Services to enter into a contract with a multistate purchasing pool or otherwise to negotiate for a lower rate on medication. Again, another tool employed by insurance companies to get drugs from the drug manufacturers at a lower price and dispense them to the insureds. The combined savings from the preferred drug list and the negotiated prices should be somewhere between \$3 million and \$4 million a year to the state of Nebraska, and that savings will be realized by the state of Nebraska without compromising the care of Medicaid recipients. It is, I think, a very simple bill, and it is also a simple concept and one that I would hope you would embrace and I would encourage you to adopt and pass LB830. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the opening to LB830. As noted, there is a Health and Human Services Committee amendment filed. Senator Johnson, you're recognized to open on AM2357. [LB830]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Senator Lathrop is to be complimented for his good work on this bill, and the committee has enjoyed working with him and will continue to work with him on this bill. The question that does remain is, are there other avenues that we can still explore to even create greater savings? But let me talk just about AM2357 at this time. Basically this replaces the bill as introduced and is narrowly confined to the establishment of a preferred drug list and the incorporation of other cost-saving measures under the state Medicaid program. The amendment adopts the Medicaid Prescription Drug Act and establishes the purpose for this act and defines terms. The amendment requires that the Department of Health and Human Services to establish and maintain a preferred drug list for the medical assistance program--that is Medicaid. The amendment requires the department to establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of the list. Membership of the committee is prescribed. The department is required to adopt and publish policies and procedures for the preferred drug list. The department and the committee are required to consider all therapeutic classes of drugs for the inclusion of this preferred drug list, except for antidepressant, antipsychotic, and anticonvulsant prescription drugs. The department must include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net cost of the listed drug, after consideration of applicable rebates and discounts negotiated by the department. If the department finds that two or more prescription drugs under consideration for

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inclusion on the preferred drug list are therapeutically equivalent, the department must also include the more cost-effective drug or drugs on this list. Again, I would like to emphasize cooperation with Senator Lathrop on this and we would anticipate to continue to work with him and would ask for your support of this amendment and advancement of the bill. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening of the Health and Human Services Committee amendment, AM2357. Members wishing to speak: Senator Aguilar, followed by Senator Erdman and Senator Carlson. Senator Aguilar. [LB830]

SENATOR AGUILAR: Mr. President and members, I'd like to have an exchange with Senator Lathrop if I could. [LB830]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB830]

SENATOR LATHROP: I'd be happy to. [LB830]

SENATOR AGUILAR: Senator Lathrop, I'm going to describe a scenario to you. I would ask that you'd listen and then I'll ask you a question directly to that scenario. Not too long ago I was doing a tour of the veterans' home in Grand Island. And as we toured through the pharmacy area, they pointed out to us a probably 24-inch square box full to the brim with various pills and capsules. When asked what that was, they said those are the leftover pills we have when patients cannot any longer tolerate the medication. We have to take them back, unpack them, expose each one individually, and throw it away in this box. And then when that's full, we throw the box away. As you could imagine, there's a huge waste of not only the money for the pharmaceuticals themselves, but of the labor involved with all the packing and unpacking and counting and documenting--time and labor that would be much better expended on the patients that live there, I'm sure you will agree. Well, in this process the director described to us an automated pharmaceutical dispensing system that is available in specific nursing homes and hospitals throughout. And I said, well, why don't we have one here? And she described some of the red tape and some of the bureaucratic interference that they have to go through that they can't get one. Well, long story short, we moved very far into that process and are very close to being able to get one of those automatic pharmaceutical dispensers. My question to you is, is there anything in this legislation that would prohibit that from going forward? [LB830]

SENATOR LATHROP: No. That really happens at the level of the pharmacist and the dispensing of the medication and it does not. As a matter of fact, when I had lunch a couple weeks ago with a nursing home administrator that's in my district, same thing. They spend lots of time destroying pills that could be given to people that can't afford medications or used in other ways. But I agree with the problem that you recognize, but

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this doesn't touch it one way or the other. [LB830]

SENATOR AGUILAR: I was hoping you could answer that way because this sounds like a great piece of legislation I'd love to support. I commend you for bringing it forward. And if you need any more time, you're welcome to the rest of mine. Thank you. [LB830]

SENATOR LATHROP: Thank you, Senator Aguilar. I think I will take just a minute to say that this really is a culmination of an awful lot of work. It's an awful lot of work on the part of our committee, the Health and Human Services Committee. People that were here and working in the Legislature, Senator Nancy Thompson, this was important to her when she was here. And the folks that worked on that Medicaid Task Force did great work in trying to identify places where there's savings. The folks that put the Mercer report together did a very, very detailed job. And I commend the Health and Human Services Committee for their work in bringing it forward. I will...and lastly add that this type of a program is available in most states. I think its in the forties. Forty-some states have a program similar to this. So we're a little bit behind in the times but we will soon have an opportunity to save millions of dollars a year. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Thank you, Senator Aguilar. Senator Erdman, you are recognized. [LB830]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I've been on the committee, the Health Committee for eight years, and for a number of years we've had a number of conversations about pharmaceuticals and the cost to citizens as well as the cost to the Medicaid program. Senator Lathrop has introduced two bills: one last year similar to the green copy of LB830, and then again this year, LB830. And the committee amendment rewrites the bill. We as a committee had worked and waited for Senator Gay and others to work with both sides of this to try to find a compromise. And we were told during the executive session in which we had our vote to advance this bill that generally the details had been worked out. And then today I find out that they maybe have not been worked out. And so I don't know what is going on or what to believe. And I'm not saying we shouldn't advance the bill if that's what we're going to do because of this new revelation, if it is. But it is somewhat interesting that this has come up at this late minute. I understand that there's been some new developments even today that may impact this discussion, and I believe Senator Lathrop and Senator Gay and others that have worked on this will probably be willing to sit down and meet with them. One of the things that we still don't have, however, is the fiscal impact of this bill. And I understand that that's being worked on as we speak. Under the original idea of a preferred drug list, the opportunity to pool purchasing power and to buy prescription drugs, and especially under the Medical Assistance Act, is available. With some of the carve-outs in the committee amendment, the potential savings are substantially less because we no longer have psychotic or psychotropic drugs included in the preferred

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drug list pool. So there's some things like that that probably impact the fiscal statement that we need to probably be aware of as we go through this conversation. The preferred drug list was actually included as one of the items to be pursued under the Medicaid reform process. Because of whatever reasons, that hasn't actually come to pass. Part of it was financial reasons. But I think the opportunity to have the discussion is of value. I just raise the points that what was presented to the committee at the day of the exec session may not be accurate as of today. That doesn't mean that that's a reason to not go forward. That just means that there needs to be more work on this bill. And candidly, we need to know what the fiscal impact of this bill is because the savings will come later. There is a cost to implement that we need to know about because it may affect our current fiscal status. Mr. President, how much time do I have? [LB830]

PRESIDENT SHEEHY: Two minutes, 30 seconds. [LB830]

SENATOR ERDMAN: Senator Lathrop, I have two and half minutes. I'll yield you the remaining time to share your thoughts on what I've learned. [LB830]

SENATOR LATHROP: Okay. Thank you. I would be happy to try to respond to your remarks. I was presented with a copy of the bill. And I should add, among the people that have worked on this with me and with, you know, one of the people that have been a player in trying to bring this bill to the floor in the best shape it can be in is Vivianne Chaumont, who is with the Department of Health and Human Services. This is her subject matter and she's very, very familiar with it. We were working on different amendments and changes and accommodations, and I was presented with the bill believing that Vivianne had looked at it and said yeah, that's fine. In fact, no one had shown that to her. At least that's what she told me this afternoon. The problems that she has are not big, though. They don't go to the substance of it. There are procedural concerns that she has, that frankly the lobby went to the committee and talked to the committee about putting in an appeals process. When I saw the appeals process in there--like my drug didn't get on the list, I want to appeal that decision--I believed mistakenly that Vivianne Chaumont had okayed that. [LB830]

PRESIDENT SHEEHY: One minute. [LB830]

SENATOR LATHROP: In reality, I think she hadn't. She told me today she hadn't. I don't think that's a big deal. That administrative process is something we can talk about between General and Select. It doesn't change the fact that the preferred drug list and the requirement that the state negotiate its drug prices is going to save the state money. Is there a carve-out for some mental drugs? Yes. If we didn't carve them out, would the savings be bigger? Yes. But the difficulty with not carving out mental drugs is it's not like prescribing a drug for cholesterol. There are a lot of side effects and a lot of differences between Prozac, Wellbutrin, Effexor, you name it. And what the psychiatrists that we talked to, and Sean in my office has talked with somebody down at Creighton who's

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very knowledgeable in pharmacology and psychiatry. The carve-out for mental health drugs is important. It reduces the savings some but I was determined that a preferred drug list for Medicaid recipients... [LB830]

PRESIDENT SHEEHY: Time, Senator. [LB830]

SENATOR LATHROP: ...would not sacrifice patient care. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Thank you, Senator Lathrop. Further members wishing to discuss AM2357: Senator Carlson, followed by Senator Kopplin, Senator McDonald, Senator Lathrop, and others. Senator Carlson, you're recognized. [LB830]

SENATOR CARLSON: Mr. President and members of the Legislature, I believe that I stand in support of LB830. I would have a question for Senator Lathrop if he would yield. [LB830]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB830]

SENATOR LATHROP: Yes, I will. [LB830]

SENATOR CARLSON: Senator Lathrop, in the hearing there's listed three proponents and three opponents. The opponents look like they're marketing driven and perhaps have reservations about profits being cut. But would you address that a little bit? And in any of the changes, have any of those concerns been alleviated? [LB830]

SENATOR LATHROP: I think, first of all, two of them are pharmaceutical representatives. PhRMA is one of them and the other was the Nebraska Pharmacists Association. The pharmacists, I understand, do have a concern about the bill, and their concern is anytime a preferred drug list is implemented that there are times when the doctor doesn't prescribe the right medication. The patient comes to the pharmacy and says, here, I need some, you know, amoxicillin or a particular cholesterol medication. If it's not the preferred drug list, then they have to go back and either get a prior authorization or they have to go back and get the doctor to rewrite the prescription. Is there a hassle in there somewhere for a pharmacist? Probably. Probably early on there will be more of it than later on, but that's what they get paid for. That would be my response, so... [LB830]

SENATOR CARLSON: Okay. [LB830]

SENATOR LATHROP: You know, it's not like...dispensing medication is supposed to be easy. So I know the PhRMA people I think are comfortable with the bill, with the appeals process. That's my understanding. They recognize that it's accepted practice in

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40-some states already and that it's coming to Nebraska. And so I think they got what they wanted with an appeals process. [LB830]

SENATOR CARLSON: Okay. Thank you, Senator Lathrop. That answers my question. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Kopplin. [LB830]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. May I speak with Senator Johnson, please? [LB830]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB830]

SENATOR JOHNSON: Yes, sir. [LB830]

SENATOR KOPPLIN: Senator Johnson, I'm trying to understand this bill. I understand the financial aspects of it fine. But basically what we're doing is looking at low-bid drugs. Is that correct? [LB830]

SENATOR JOHNSON: That's correct. [LB830]

SENATOR KOPPLIN: And basically would you say that this drug list kind of takes the place of the doctor prescribing the drug? [LB830]

SENATOR JOHNSON: Well, I don't think that you can go that far. What it does is...you might make the argument that it might restrict the medications that he uses. The question really comes, Senator Kopplin, is on the medications for the antidepressants, the antipsychotics, and the anticonvulsants. The problem is complicated by the fact that these are some of the more expensive medications. So if you could reduce the cost of these groups of medications, your savings will be higher and that's where the rub comes in, is how much leeway do you have to give on these medications. [LB830]

SENATOR KOPPLIN: Okay. But my...not even concern. My question is, we're dealing with very vulnerable people. They could be small children to very old adults. And I realize there's an appeal process. Very old adults are not going to really access that. And I guess what I'm asking you then is if we're going to low bid, this is being conducted by Health and Human Services. Is that correct? [LB830]

SENATOR JOHNSON: Yes, sir. But there's also been a lot of input from other groups for the last couple of years. I believe the state Medical Association has actually had a committee that has been working on this particular problem since it is so sensitive. [LB830]

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SENATOR KOPPLIN: Okay. But really what we're doing is saying Health and Human Services, go out and get the low-bid drug, and give it to our people, I believe. Okay, thank you. [LB830]

SENATOR JOHNSON: You bet. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. We have Senator McDonald, followed by Senator Gay, Senator Johnson, Senator Loudon, and others. Senator McDonald, you're recognized. [LB830]

SENATOR McDONALD: Mr. President, members of the body, I'd like to ask Senator Johnson a couple of questions. [LB830]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB830]

SENATOR JOHNSON: Yes. [LB830]

SENATOR McDONALD: Looking at the preferred drug list, if I have cancer, is...and there are all different types of cancer and there are all different types of medication for those cancer. Am I going to be restricted to the preferred list if it doesn't cover the cancer that I have? [LB830]

SENATOR JOHNSON: No, I would think not. That's just off the top of my head, of course. But you don't hear much discussion regarding the different medications for malignancies. It really, where the discussion comes down to, are these three that we just mentioned that are various mental diseases, for want of a better shorthand word. That's where the expensive medications are that are hard to substitute. [LB830]

SENATOR McDONALD: Thank you, Senator Johnson. And I support this bill, and I think that anytime we can save money on prescriptions I think we need to go there. One of my first years when I was in here, I developed the cancer repository to take unused medications that met certain requirements and allow those to be given to a repository and then represcribed. A couple of years ago I did that same thing with immunosuppressants so that the Med Center could also have that opportunity. This year I have a bill, LB866, and I didn't prioritize it though I had promised many people that I would introduce it before I left office, and that is a repository for all types of life-threatening diseases. And as I've talked to many people in my district, nursing homes and assisted living, those types of places, even veterans' home, as Senator Aguilar talked about, waste medications consistently. And those meet the requirements of a repository. So I would hope at some point in time--I'm not going to be able to see it passed here--but I hope someone picks up the ball, takes that opportunity, take those unused medications, put them in a repository. If nothing else, I think as our aging population happens in our prisons, I think there is a prime opportunity to use those

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medications. They meet all the requirements of good medications that have not been tampered with and I think we need to move forward on that. So I hope someone here decides to take that and work with it after I'm gone. But thank you, and I do support the bill. [LB830 LB866]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Gay, you are recognized. [LB830]

SENATOR GAY: Thank you, Mr. President. I would just say some of the comments we're hearing...Senator Erdman was correct in bringing that up. The committee...we worked hard on this, we've made revisions. Due to the fact that, quite honestly, this is not one of these bills that everyone is happy. When you're saving money, you're...somebody is losing money. And you look on the statement of intent and there's a fine line to walk. Senator Lathrop, to his credit went above and beyond, working with many people. The one thing, and he took out psychotropic drugs because we don't want to create a bigger problem of somebody who has a mental illness that cannot get their drug or has to change drugs or something like that. So that's why, a little bit, we've taken time to go and fix that situation and find that happy medium. Because all the savings we may gain on one end could go out the other door if they get off their drugs and they're in the community. We already have a problem. We didn't want to add to that problem. So to his credit, he's worked and tried to work and get input from a lot of different people. And that's why this has been amended. What we found today, Vivianne Chaumont has talked to Senator Lathrop, myself, and a few others. She was in and out. And you can imagine, a lot of busy people moving in and out doing things. But I talked to her today and Senator Lathrop and I are meeting with her again tomorrow, and any other concerns. One of those other concerns again was trying to be helpful to someone, saying hey, we'll give you the opportunity to have your input on this bill, so if you're a provider or something we want you to have input on this bill, too, to make it the best bill you possibly could. Along that way maybe did it change? A little bit, yes. I still think there's savings there. Between now and Select File we'll get that fiscal note and see where we're at on the savings. Is there as much maybe as we could have had, had we not excluded some of these drugs? No. We could have, but in the long run I think we're doing the right thing by not doing that. If we find and feel comfortable later down the road that we can go there and get more savings, fine, but we don't want to do it on the backs of those vulnerable people that Senator Kopplin and Senator Carlson are discussing here, too, and everyone in this body. So I think in a way, Senator Erdman, we had addressed those concerns and the committee has worked on this very diligently, as Senator Johnson described. But I just wanted to kind of get up and say why that has happened. And like I say, sometimes I think by trying to be overly, you know, to get it perfect, these things happen. It's still a very good bill. And could it be tweaked? This might be one of those things where you got to...well, we will, because we continually monitor what's on the list and we want to make sure no one gets harmed and we get savings in an appropriate way. So I wanted to put that out there for the body to

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understand kind of the process we went through at this point. Thank you, Mr. President. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Johnson, you're recognized. [LB830]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. Certainly I think one of the things that's happened here tonight is that we never anticipated being this far along on the agenda here tonight. We thought that we had plenty of time to have a meeting tomorrow morning in my office about this and further resolve and make sure that we could come to the floor tonight with this resolved. And we apologize for that not being the case. We were kind of caught here unexpectedly here tonight. The comments that Senator Erdman, Senator Gay, and Senator Lathrop and others have made are definitely due for due consideration and we do intend to go over this further. We did have a meeting with Vivianne Chaumont, whose area this is under in the department, today and she will be meeting with our group tomorrow. We're going along here, I got to think this could be called the Willie Sutton amendment or clause. For those of you that don't know who Willie Sutton is, he was a world-famous bank robber at one time. And when he finally was caught, they asked him why he robbed banks. And his answer was, because that's where the money is. These are the medications, where the money is, and that's why it's so important and so difficult to resolve. So we're going to do our best tomorrow morning and hopefully on Select File we can come back with a very concrete answer to these problems. With that, I surrender the rest of my time. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Louden, followed by Senator Friend and Senator Erdman. Senator Louden, you're recognized. [LB830]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. Would Senator Lathrop yield for questions, if he would, please? [LB830]

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB830]

SENATOR LATHROP: Yes, I will. [LB830]

SENATOR LOUDEN: Okay. Senator Lathrop, I have some questions on this amendment, and I guess I'll start with Section 8 at the back of it and work the other direction. And in Section 8, they talk about entering into a multistate purchasing pool and negotiate with manufacturers or labelers and that sort of thing and to get the lowest available price for such drugs. Now my understanding, that's what this bill is all about, is to get a better price for people on Medicaid. Is that correct? [LB830]

SENATOR LATHROP: That's correct. [LB830]

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SENATOR LOUDEN: Okay. Now when you have this Section 8 in there, when you talk about multistate, now where are you going? Are you shipping those drugs in? Are they going to come in from Canada, Mexico? And what effect will that have on some of your local druggists in some of these towns that are probably supplying drugs to these nursing homes at the present time? [LB830]

SENATOR LATHROP: Actually, none of it involves shipping medications in unlawfully or from Canada, to my knowledge. Here's how it works, Senator. There are presently in existence multistate purchasing pools. For example, there may be seven states that got together and said we can get a better price on our medication if we put all of the Medicaid recipients, all those people that are getting drugs into one pool. We can get a better price than if the state of Nebraska, with whatever our Medicaid numbers look like, if Nebraska negotiated this on its own it won't do as well as if they join a group of states and they go to, you know, one of these pharmaceutical companies and say there's a whole bunch of us, we got a whole bunch of patients, and we want a lower price. That's all it is. [LB830]

SENATOR LOUDEN: Okay. Now then in other words you will be bypassing your local pharmacy. Usually even if they do... [LB830]

SENATOR LATHROP: No, no. Not at all. All we're doing is setting a price that is passed through...the savings can come to the state of Nebraska in the form of a lower price or a rebate from the manufacturer. And I don't want to complicate this too much, but the pills are still dispensed by Walgreens or Target or whomever the pharmacist is. That process doesn't change at all. [LB830]

SENATOR LOUDEN: They would still be the ones that would dispense the drugs--that pharmacy, that local pharmacy? [LB830]

SENATOR LATHROP: The local pharmacy dispenses the drug. We're just getting it at a better price. [LB830]

SENATOR LOUDEN: But you would dictate then what the price should be because you've already gotten this bid from a manufacturer someplace. Is that what you're telling me? [LB830]

SENATOR LATHROP: Exactly. [LB830]

SENATOR LOUDEN: Okay. And then in one of these other parts here, the prescription drug...let's see, it's on page 4 anyway, the list and the net cost of the new prescription equal to or less than the net cost of the listed drug. Now when that is done, I guess this is my concern. In some of these small towns around, you have a nursing home there and the local pharmacy usually bids in those drugs there and they take care of the

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drugs, they bring them in, put them in boxes for them and the whole bit. I'm wondering, by doing some of this, are you going to bypass that service so that is done from someplace else? [LB830]

SENATOR LATHROP: No, no. [LB830]

SENATOR LOUDEN: Okay. [LB830]

SENATOR LATHROP: This has nothing to do with how the drugs get dispensed themselves. That will still be done in the usual manner. The state just has a better price. It's the same thing Blue Cross Blue Shield and United HealthCare are doing right now. They go in and negotiate with a pharmaceutical company for a cheaper price and that's the price for all of their insureds. And we're just doing that with the Medicaid recipients just as though they were insureds under an insurance policy. [LB830]

SENATOR LOUDEN: Okay. And then on page... [LB830]

PRESIDENT SHEEHY: One minute. [LB830]

SENATOR LOUDEN: ...on page 2 they talk about this committee. Now this committee will be the people that will go out and do the negotiating for the drugs in different areas. Is that what that committee of 15 to 20 members, it will be... [LB830]

SENATOR LATHROP: No, Senator. That's actually a selection committee. And this goes to a point Senator Kopplin made. We're not just going out to get the cheapest drugs that do something. The first thing we do is the committee looks for what is the best drug. [LB830]

SENATOR LOUDEN: But I mean, that's (inaudible)... [LB830]

SENATOR LATHROP: These people don't get the second...go ahead. [LB830]

SENATOR LOUDEN: The committee is formed to look into the drugs and purchase the drugs or something like that. [LB830]

SENATOR LATHROP: The committee is formed to determine which is the best drug. Once we decide which are the drugs that meet the criteria as the best for a particular malady, like cholesterol, then we make them compete by bidding to be the preferred drug. So they get more volume, they make a little less money on each pill, but... [LB830]

PRESIDENT SHEEHY: Time, Senator. [LB830]

SENATOR LATHROP: ...they have more volume. Is that time? [LB830]

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PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Louden. Thank you, Senator Lathrop. The Speaker would like me to announce that the agenda for tomorrow is available at this time online. The agenda for tomorrow is online. Senator Friend, followed by Senator Erdman. Senator Friend, you are recognized. [LB830]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I rise in support of AM2357 and support of LB830 with some minor concerns. I think that the points that have been brought up already are pertinent and I think Senator Lathrop--I'm not going to put words in his mouth--I think that he would feel like they are. But let me point out a couple things, and I think I'm going to create an analogy here and tell me if I'm all wet. I knew that was coming. In the committee amendment, it more or less says that the Department of Health and Human Services in consultation with the committee, the committee that's created, shall adopt and publish policies and procedures for a preferred drug list. And it includes the guidelines for presentation; review of drugs; inclusion on the preferred drug list; the manner and frequency of audits of the preferred drug list for appropriate dissipation, care, and cost-effectiveness; and an appeals process for resolution of disputes; such other policies and procedures as the department deems necessary and appropriate. I think Senator Lathrop is right. There are potential cost savings here. With that in mind, before this bill was amended by the committee, we have a fiscal note that said that the same department estimates that the total costs are over \$2.5 million in fiscal year '09, and over \$3.5 million in fiscal year '10, and \$1 million provided for the bill in the first year of implementation. That's not going to be the case anymore. The pertinent question then is, what is it going to be? That's what everybody is trying to figure out here right now. But here's the analogy, and I don't think I'm all wet. Senator Lathrop proposes an idea that will be accompanied by cost savings in the future. And this is analogous to a tax cut, an income tax cut. We know that the Appropriations Committee is going to stand there and say, Friend, Lathrop, you know, Ashford, whoever, you guys are doing this and it's going to cost us money. But the idea would be, hey, look, four years from now we're going to generate revenue and we're going to generate a lot more. Are we going to say trust us on that? No, we're going to go out and find statistics and facts that show that that's going to be the case. And we do have statistics and facts that show that would be the case. I think all anybody is asking for is to find out what those statistics and facts are going to be, and I think Senator Lathrop would be happy between here and Select File to provide all that information. That being the case, if you did produce that tax cut, you're talking about a better economy, you're talking about economic development, you're talking about increased wages, you're talking about producing better results for the state in the long run. I would say, with all that said, the analogy plays out. I'm not saying have blind faith. What I'm saying is, between General File and Select File some of these answers, we're going to be able to determine those. But I think we've been moving at what I would consider for a 60-day session a rapid-fire pace today, wouldn't you? So that being the case, I don't think that Senator Lathrop--and again, I don't want to put words in his mouth--I don't

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think he's had time to deal with this appropriately today. I don't even know if he thought we would get here. So I would say this: Between now and Select--and do whatever you want obviously--I would say between now and Select those answers will come. And we don't have that much time. But we're going to figure out what the fiscal impact is. We have to know what the fiscal impact is eventually. [LB830]

PRESIDENT SHEEHY: One minute. [LB830]

SENATOR FRIEND: So I would say we move through this. And it's not just blind faith; I think we're going to figure out these answers. If you like the idea that Senator Lathrop has proposed, and I do, let's figure out what those numbers are later and deal with it appropriately. I guess that's all I'd have, Mr. President. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Erdman, you are recognized. Senator Erdman, you are recognized. [LB830]

SENATOR ERDMAN: Thank you, Mr. President. I realize that. Members, and I want to not necessarily respond directly to what Senator Gay said, but it's...the reason that there is an issue with me on what we're doing here is not because we're doing something one way or another. The fact is, is that when we voted on this bill in committee, Senator Gay represented to the committee that it had been worked out. Now the fact is, is that Senator Gay and others can't control what they didn't know at the time, and to their knowledge they had worked it out. And so they aren't to be blamed for this. But the reality is, is that we need to ensure...Senator Johnson says they're going to have meeting. I think that's fantastic. I will tell you that Senator Gay and Senator Lathrop and others have worked tirelessly on this and I have no doubt that they'll be willing to work it out with whoever. But it's not accurate to say that somehow my comments are reflective of parties involved in here. It's a reality that what is before us is different in reality than what was presented to us, and it's not because of the members of the Legislature's fault. It's because there are issues that have come up. We should advance the bill. We should adopt the committee amendment, we should advance the bill, and we should sit down with the parties and figure out what is going on and why these games or these issues have come up. And if the decision is that there are people out here that simply don't like the bill, then it would an interest to the members of the Health Committee and Senator Lathrop to know that, instead of saying no, we worked out a deal, and then they actually never agreed to a deal. Let's find out what the facts are, let's put the people in a room, let's resolve that issue. And when the A bill shows up--and there will be one--we'll know what that is. So let's adopt the committee amendment, let's advance LB830, and let's let the work happen between General and Select File as it has already been going on between the committee hearing and the advancement of the bill. That's reasonable. And everybody so far, I believe, at least from those that I'm talking to and especially members of the Legislature, are negotiating in good faith. They're operating under the assumption that people want to be there to find a solution, and the department needs to

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be involved in those conversations because ultimately they're going to administer our plan. They're going to administer a PDL. They're going to figure out how to get into a multistate purchasing pool. And the drugs that need to be on the list to make sure that they have the savings long term and the analogy that Senator Friend provides us can come true. So adopt the committee amendment, advance the bill, and let's let Senator Lathrop and Senator Gay, Senator Johnson and others, figure out what the issues are that have come up today, how to resolve them, and then present whatever their solution is to us before the bill comes up or during the bill on Select File. Thank you, Mr. President. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Are there additional members wishing to speak on AM2357? Seeing none, Senator Johnson, you're recognized to close. [LB830]

SENATOR JOHNSON: Mr. Lieutenant Governor, I don't think that I can improve on what Senator Erdman has just said. There is a lot of work to be done on this. The speed that things have moved today compared to the rest of the session has been almost at Mach speed. But we do have this meeting set for tomorrow and I can promise you that the committee will continue to work diligently with all parties. And with that, would ask that you advance both the amendment and the bill from General File this evening. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the closing. The question before the body is on the adoption of AM2357, the Health and Human Services Committee amendment. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB830]

ASSISTANT CLERK: 37 ayes, 0 nays on the adoption of committee amendments. [LB830]

PRESIDENT SHEEHY: AM2357 is adopted. We will turn to floor discussion on the advancement of LB830. Seeing no members wishing to speak, Senator Lathrop, you're recognized to close. [LB830]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I do want to kind of put this discussion in perspective so that we have some sense of what Senator Erdman is talking about. First, this bill, we're not making up numbers. The thing that we don't have in front of you that I've read is the Mercer report. And it talks about saving as much as \$6.5 million a year by implementing these two processes. We can pare that back a little bit because we're not going to include every single drug. We're still talking about millions of dollars a year. Are there concerns? Yeah, there's somebody out in the back who came in today, the pharmacists, who have a concern about the hassle that's associated with dealing with a prescription that isn't for one of the preferred drugs.

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That's not something we can't work out. I don't know if I can accommodate the pharmacists, but the concern over the procedural changes, the differences between this and what was coming out--small, it's small stuff. And we talk about it like it's a major deal. Easy to work out before Select File. I will work on it. Senator Gay, I'm sure will work on it. We'll have it, we'll have these small problems resolved before it gets to Select File. I want to do one more thing, and that's to assure the body of this: These are Medicaid recipients who need healthcare. This bill does not sacrifice their care in any respect. It is not pharmacists prescribing. It's not the state of Nebraska prescribing. The doctor prescribes the preferred drug for a particular malady and there is a savings because we choose the best drug and make people compete for the price. This is a good bill. It saves millions of dollars a year for the state. Whatever technicalities need to be worked out between now and Select, you have my word that it will be done and I ask you to move LB830. Thank you. [LB830]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the advancement of LB830. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB830]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB830]

PRESIDENT SHEEHY: LB830 does advance. Items for the record, Mr. Clerk. [LB830]

ASSISTANT CLERK: One item, Mr. President. Senator Cornett has an amendment to LB1082. (Legislative Journal page 1111.) [LB1082]

And I do have a priority motion. Speaker Flood would move to adjourn until Thursday, March 27, 2008, at 9:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, March 27, 2008, at 9:00 a.m. All those in favor say aye. Opposed, nay. The Chair rules we are adjourned.