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Floor Debate
March 27, 2008

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this, the forty-eighth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Paul Rutten, from Madonna Rehabilitation Hospital here in Lincoln, Nebraska, Senator Fulton's district. Would you please rise.

FATHER RUTTEN: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Father. I call to order the forty-eighth 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: Mr. President, I have no corrections this morning.

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

ASSISTANT CLERK: Mr. President, one item. LR298, offered by Senator Aguilar. It would propose an interim study. That's all that I have this morning. (Legislative Journal page 1113.) [LR298]

SENATOR LANGEMEIER: Thank you. We will now proceed to the first item on this morning's agenda. General File, 2008 priority bills, LB806. [LB806]

ASSISTANT CLERK: Mr. President, LB806, introduced by Senator Wallman. (Read title.) The bill was read for the first time on January 10 of this year, referred to the Health and Human Services Committee. That committee reports the bill to General File, with committee amendments. (AM1754, Legislative Journal page 501.) [LB806]

SENATOR LANGEMEIER: Thank you. Senator Wallman, you are recognized to open

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on LB806. [LB806]

SENATOR WALLMAN: Thank you, Mr. President. And this bill is intended to comply with the Americans With Disabilities Act. Currently, in our statutes we have language that uses dog guides, hearing aid dogs, and service dogs. This would make it all consistent by referring to them as service animals. The ADA defines a service animal as any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with disabilities. If they meet this definition, animals are considered service animals under the ADA, regardless of whether they have been licensed or certified by a state or local government. Service animals play a vital role in a person with disabilities, in their life. They are animals that are individually trained to perform tasks such as guiding people who are blind, alerting people who are deaf, pulling wheelchairs, alerting and protecting a person who is having a seizure, or performing other special tasks. Service animals are working animals, not pets. And the committee has an amendment. [LB806]

SENATOR LANGEMEIER: Senator Johnson, would you yield? [LB806]

SENATOR JOHNSON: Yes, I would. [LB806]

SENATOR LANGEMEIER: Senator Wallman, are you wishing to give your time to Senator Johnson? [LB806]

SENATOR WALLMAN: Yes, I'll give my time to Senator Johnson. [LB806]

SENATOR LANGEMEIER: Senator Johnson, you're recognized; 8 minutes, 38 seconds. [LB806]

SENATOR JOHNSON: All right. Well, let me just say this first, is that we...the committee is strongly in favor of this, and the intent is to distinguish between the pets and the service dogs itself. There are certain conditions where people who are in need of the service animals might be discriminated against and so on, and this will be dealt with, with the amendment. And we can either get into that now if you'd like, or perhaps we should just terminate our first conversation here this morning, and then I'll get into the amendment to follow. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Thank you, Senator Wallman. As the Clerk has stated, there are committee amendments offered by the Health and Human Services Committee. Senator Johnson, as Chair of that committee, you are recognized to open on the committee amendments. [LB806]

SENATOR JOHNSON: Thank you, Mr. President. Members of the body, the committee amendment, AM1754, would prohibit the charging or receiving of a pet deposit from a

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person with a disability who has or obtains a service animal. Current law still requires the person with a disability to pay for any damages caused by the service animal. Requiring a pet deposit appears to conflict with the provisions of the federal Fair Housing Act. Under federal law a service animal is not considered a pet but is more akin to a wheelchair, that is a necessary accommodation for persons with these disabilities. This is a technical but important correction in the current law that we feel should be made. I'm quite sure that Senator Wallman does support this amendment, and I would ask for its adoption. Thank you, Mr. President. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Mr. Clerk, for a motion. [LB806]

ASSISTANT CLERK: Mr. President, Senator Johnson would offer AM2549 to the committee amendments. (Legislative Journal page 1114.) [LB806]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on AM2549. [LB806]

SENATOR JOHNSON: Thank you again, Mr. President. We felt that we needed to add this floor amendment to make sure that there is no question as to the exact wording. AM2549, what it does is simply makes the technical correction to the committee amendment so that it would be more precise. What it does is that it distinguishes so that the words "pet deposit" will distinguish so that there is a clear distinction between this, and that is all that this amendment relates to. Thank you again. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have now heard the opening on LB806, the committee amendments, and AM2549, offered to those committee amendments. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you are recognized to close on AM2549. [LB806]

SENATOR JOHNSON: Again, this is just a technical wording to help distinguish exactly what we're talking about here with service animals and pets. Thank you. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on AM2549 offered to the committee amendments. The question before the body is, shall AM2549 be adopted to the committee amendments? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB806]

ASSISTANT CLERK: 26 ayes, 0 nays, on the adoption of Senator Johnson's amendment, Mr. President. [LB806]

SENATOR LANGEMEIER: AM2549 is adopted. We return now to discussion on the committee amendments, AM1754. The floor is now open for discussion. Seeing no

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lights on, Senator Johnson, you are recognized to close on the committee amendments. [LB806]

SENATOR JOHNSON: Again, I just ask for your support of this. This is a good bill, and these are technical amendments to clear up, to make sure that we are in compliance with federal regulations, so that we are under the right conditions for these very needed service animals. Thank you. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on the committee amendments. The question before the body is, shall the committee amendments be adopted to LB806? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB806]

ASSISTANT CLERK: 29 ayes, 0 nays, on the adoption of committee amendments. [LB806]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to discussion on LB806, the bill itself. Seeing no lights on, Senator Wallman, you are recognized to close on LB806. [LB806]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, HHS Committee, for disability...helping out people with disabilities. And I would urge green on this bill. Thank you, Mr. President. [LB806]

SENATOR LANGEMEIER: Thank you, Senator Wallman. You have heard the closing on LB806. The question before the body is, shall LB806 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB806]

ASSISTANT CLERK: 31 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB806]

SENATOR LANGEMEIER: LB806 does advance. (Doctor of the day and visitor introduced.) Returning back to this morning's agenda, the next bill is LB819. Mr. Clerk. [LB806 LB819]

ASSISTANT CLERK: LB819, introduced by the Business and Labor Committee. (Read title.) The bill was read for the first time on January 10, referred to the Business and Labor Committee, which reports the bill to General File, with committee amendments. (AM1791, Legislative Journal page 545.) [LB819]

SENATOR LANGEMEIER: Thank you. Senator Cornett, you're recognized to open on LB819. [LB819]

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SENATOR CORNETT: Thank you, Mr. President and members of the body. LB819 was introduced by request of the Department of Labor. It is a cleanup bill for the unemployment program but also contains important provisions for making tax collection more efficient, through increased reliance on electronic filings. Section 1 cleans up some language in the confidentiality provision of Section 48-612.01 that was enacted last year as part of LB265's conformity provisions. Beginning in 2006, employers with payroll of \$500,000 or more were required to file combined tax and wage reports and pay their combined tax electronically. Sections 2 through 4 reduced the payroll threshold for electronic filings to \$100,000. There are approximately 48,000 employers who file combined wage and tax reports each quarter. Of those, 12,787 have payrolls in the \$100,000 to \$500,000 range. Over 7,000 employers in the \$100,000 to \$500,000 range are already filing electronically. So LB819 would require about 5,154 employers to switch from paper to electronic filing. This electronic filing requirement would be waived if it causes the employer undue hardship. Section 5 is a cleanup measure that would adjust the rate recalculation process in the event of the acquisition of one business by another to match up with the fiscal year system now used for calculating employer tax rates. LB819 had no opponents at the hearing and was advanced out of committee with amendments on a 6-0 vote, with one member absent. Thank you very much. That is the opening on LB819, and I'll move to the committee amendment. [LB819 LB265]

PRESIDENT SHEEHY PRESIDING [LB819]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to LB819. As noted, there is an amendment from Business and Labor Committee, AM1791. Senator Cornett, you're recognized to open. [LB819]

SENATOR CORNETT: The committee amendment makes a technical change to the conformity provisions regarding Workers' Compensation Court's ability to access and utilize unemployment data for the purpose of enforcing Workers' Compensation Act. The remainder of the committee amendment contains suggestions requested by the Department of Labor. The first change would incorporate into current regulations and practices regarding the charging of unemployment and benefits. Nebraska's unemployment system has not been as highly rated as it should have been in some recent surveys, because of Nebraska's method of charging benefits in the case of part-time workers and combined wage claims are not reflected in statute, as is done in some other states. Unfortunately, rating services such as the Tax Foundation apparently only look at the state statutes in determining how business-friendly a state's unemployment program is. Thus, a state with the same practice as Nebraska gets a better rating in this category by the Tax Foundation than does Nebraska, even though both states treat benefits paid to part-time workers the same. This amendment would make Nebraska's rating by such organizations more accurately reflect the system that

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exists in this state currently. Finally, the committee amendment would provide no positive balance employer would be assigned a rate higher category than Category 19. When the array system was enacted in 2005, no one contemplated positive balance employers would ever be assigned the highest rate category. However, with improvements in Nebraska's economy, this year we found that some positive balance employers ended up being assigned Category 20 along with negative balance employers. It would seem to the department and to the committee that there ought to be a distinction and rewards for employers who have managed to keep their experienced accounts positive by avoiding large layoffs. This amendment would also add an emergency clause, so these changes are in place at the start of the fiscal year. That concludes my opening and my remarks on the committee amendment. I would urge the body to adopt the committee amendment and LB819. Thank you. [LB819]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the Business and Labor Committee amendment, AM1791. Are there members wishing to speak on the floor? Seeing none, Senator Cornett, you're recognized to close. Senator Cornett waives closing. The question before the body is on the adoption of AM1791 to LB819. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB819]

ASSISTANT CLERK: 28 ayes, 0 nays, on the adoption of committee amendments, Mr. President. [LB819]

PRESIDENT SHEEHY: AM1791 is adopted. We will now return to floor discussion on LB819. Seeing no requests to speak, Senator Cornett, you're recognized to close. [LB819]

SENATOR CORNETT: Thank you very much, Lieutenant Governor and members of the body. Again, I urge the body's support of LB819. This was a bill brought to us by the Department of Labor and basically just makes technical changes, and with the committee amendments will improve Nebraska's tax rating by the Tax Foundation. Thank you very much. [LB819]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the advancement of LB819. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB819]

ASSISTANT CLERK: 31 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB819]

PRESIDENT SHEEHY: LB819 advances. Next item under General File. [LB819]

ASSISTANT CLERK: Mr. President, LB953 was introduced by Senator Nelson. (Read title.) The bill was read for the first time on January 14 of this year, referred to the

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Banking, Commerce and Insurance Committee. That committee reports the bill to General File, with committee amendments. (AM1941, Legislative Journal page 669.) [LB953]

PRESIDENT SHEEHY: Senator Nelson, you're recognized to open on LB953. [LB953]

SENATOR NELSON: Thank you, Mr. President and members of the body. I rise today to introduce LB953. Before I begin I want to thank Speaker Flood for naming LB953 as one of his Speaker priority bills. LB953 was heard before the Banking, Commerce and Insurance Committee on February 19, 2008. There were no opponents testifying at the hearing, and the bill was passed by the Banking Committee unanimously. Under current law, ownership of a manufactured or mobile home is evidenced by a certificate of title. A lender may perfect its lien on this personal property by notation of its lien on the certificate of title. Nebraska law provides a method by which the certificate of title to a manufactured or mobile home may be surrendered for cancellation, and upon the filing of an affidavit of fixture against the real estate on which this personal property is located. The manufactured or mobile home is then deemed to be affixed to real property. Taking these actions effectively converts the manufactured mobile home from a motor vehicle, for which a lien may only be perfected by notation on the certificate of title, converts it to real property which may be transferred by deed, and for which a lien may be perfected by the filing of a mortgage or a deed of trust. Subsequent to the passage of the manufactured mobile home certificate of title law in 2006, the Department of Motor Vehicles has indicated that it will not issue a motor vehicle certificate of title to a manufactured mobile home if it has been affixed to real property prior to the owner's making application for the issuance of a certificate of title. The refusal to issue a certificate of title under such circumstances has brought into question the existing procedure for converting a manufactured mobile home from personal property to real property. So LB953 clarifies the rights of a purchase money security interest holder in a motor vehicle against the rights of a judicial lien creditor and execution creditors. It requires the issuance of a certificate of title for a manufactured home or a mobile home which is affixed to real estate, and for which the certificate of title has not previously been issued and surrendered for cancellation. And finally, it provides that for the purpose of a bankruptcy plan under Chapter 13, a manufactured home or a mobile home shall be deemed real property. There is a committee amendment, and Senator Pahls will be introducing a committee amendment, then, that strengthens this bill, and I will be happy to answer any questions you might have at that time. Thank you, Mr. President. This concludes my remarks on the opening. [LB953]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You have heard the opening to LB953. As noted, there is a committee amendment from Banking, Commerce and Insurance. Senator Pahls, you're recognized to open on AM1941. [LB953]

SENATOR PAHLS: Good morning, Lieutenant Governor and members of the body. The

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committee amendments would clarify and streamline the bill. Importantly also, the committee amendments would address concerns raised by the Department of Motor Vehicles about the bill, as introduced. In Section 3, the committee amendments would streamline the requirements regarding issuance of a certificate of title for a manufactured home or mobile home for purposes of surrender and cancellation. First, the committee amendments would provide that every owner of a manufactured home or a mobile home shall obtain a certificate of title prior to affixing it to real estate. Second, to give the Department of Motor Vehicles clear guidance, the committee amendments would provide that if a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner shall apply for and be issued a certificate of title at the time for surrender and cancellation. These steps would provide a mechanism for a manufactured home or mobile home to be changed from personal property to real property. In a couple of instances the committee amendments would provide for more correct terminology. Example: In Section 1 the committee amendments insert "shall" for "may." In Section 5 the committee amendments change the language so it more accurately speaks of when a purchase money security interest attaches, rather than is created. That concludes my remarks on the amendments, and I urge your adoption. [LB953]

PRESIDENT SHEEHY: Thank you, Senator Pahls. You have heard the opening of the committee amendment from Banking, Commerce and Insurance. Are there members wishing to speak? Seeing none, Senator Pahls, you're recognized to close. Senator Pahls waives closing. The question before the body is on the adoption of AM1941 to LB953. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB953]

ASSISTANT CLERK: 31 ayes, 0 nays, on the adoption of committee amendments, Mr. President. [LB953]

PRESIDENT SHEEHY: Committee amendment AM1941 is adopted. We'll return to floor discussion on LB953. Are there members requesting to speak? Seeing none, Senator Nelson, you're recognized to close. [LB953]

SENATOR NELSON: Thank you, Mr. President. This is simply a bill that clarifies and assists the Department of Motor Vehicles in determining when they can properly issue a certificate of title, and then the property will be converted from personal property to real property, because it has been affixed. And I want to thank you, Mr. President, and urge the body to advance LB953. Thank you. [LB953]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You have heard the closing. The question before the body is on the advancement of LB953. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB953]

ASSISTANT CLERK: 33 ayes, 0 nays, on the vote to advance the bill, Mr. President.

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[LB953]

PRESIDENT SHEEHY: LB953 advances. Next bill under General File. [LB953]

ASSISTANT CLERK: Mr. President, LB995, introduced by the General Affairs Committee. (Read title.) The bill was read for the first time on January 16 of this year, referred to the General Affairs Committee. That committee reports the bill to General File, with committee amendments. (AM2118, Legislative Journal page 995.) [LB995]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McDonald, you're recognized to open on LB995. [LB995]

SENATOR McDONALD: Mr. President and members of the body, LB995 changes some duties of local government, makes clarifications, and updates language in the cemetery statutes, to address some of the problems involved with maintaining small, abandoned, and neglected pioneer cemeteries. This bill is the result of several years of study on the issues surrounding abandoned, neglected, and pioneer cemeteries. The General Affairs Committee has been working with groups and individuals who have an interest in such cemeteries, as well as with the county officials' association, municipal government association, the State Historical Society, and the Commission on Indian Affairs. While the bill does not make sweeping changes to the cemetery law, it does make small changes that are important to the groups of citizens who have worked to preserve cemeteries, who have said that they need the Legislature's help to better maintain these cemeteries. There were disagreements between parties on some portions of the original bill, so we have worked out a compromise in a committee amendment, which I will describe to you when I open on the amendment. The parts of the bill that remain do the following: Chapter 12, Article VIII contains the statutes relating to the maintenance and the improvement of cemeteries and are the sections containing the bulk of this bill's changes. Section 3 through 6 and Sections 8 through 10 of the bill provide for the same change to Sections 805, 806, 807, 808, 1202, 1204, and 1401. When referring to abandoned and neglected cemeteries, the word "and" is replaced with "or." The original statute has been interpreted as meaning that a cemetery has to be both abandoned and neglected before a county has to provide services for maintenance. Under current statute, a cemetery has to be abandoned and neglected for 20 years before the county will act. What has happened is that the county boards have decided that even though a cemetery has been abandoned and neglected for 20 years, if someone comes in and does a one-time basic cleanup, such as a Boy Scout Eagle project, there is no...it is no longer neglected. Since the cemetery has to meet both standards, the 20-year toll begins again. By changing the "and" to "or," the county would no longer be able to use this argument. Also, Sections 3, 8, and 10 of the bill delete reference to the term "Indian burial ground," because the unmarked human burial sites statutes govern Indian burial grounds now and negated the provisions of these sections. The Commission on Indian Affairs agrees that taking these references out of the cemetery statutes will serve to

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clarify what law is to apply. Other provisions of the bill: Section 1 amends Section 12-401, which provides the cemetery board rules in cities of less than 25,000 population and villages by revising cemetery board membership guidelines. This is done at the request of the League of Municipalities. Section 2 amends Section 12-402 relating to tax levy limits for cemetery funds in cities of 25,000 or less by granting the local governing body the authority to issue warrants for the Cemetery Fund if the cemetery board is not planning to meet before a bill is due. Section 3 amends Section 12-805 by requiring instead of allowing county boards to use General Funds for the care and maintenance of abandoned and neglected cemeteries and sets up a cap of \$1,000 per cemetery, per year, that may be expended. Section 5 amends Section 12-807 which requires county boards to provide continuous maintenance for pioneer cemeteries by adding that mowing is to be part of that maintenance. Also, when a county board is petitioned by residents to care for pioneer cemeteries, new language requires that the county publish notice of the petition. Section 6 amends Section 12-808 by replacing the 20-year time period that a cemetery has to be abandoned or neglected to get care within a 5-year period. It also states that minor or one-time maintenance does not reset the time period. But this portion is taken out in the committee amendment. Section 7 amends Section 12-810 by requiring counties that maintain pioneer cemeteries to provide four mowings annually. This provision is also revised in the committee amendment. This section further allows instead of requires counties to place historical markers on pioneer cemeteries. The change in Section 10 relating to the Statewide Cemetery Registry is to be removed by the committee amendment. And finally, Section 12 repeals outright Section 12-806.01, eliminating a requirement that each county board post signs or markers on every abandoned or neglected cemetery or Indian burial ground. Again, some of these provisions change through the committee amendment, which I will explain next. Thank you. [LB995]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the opening to LB995. As noted, we do have an amendment from the General Affairs Committee, AM2118. Senator McDonald, you're recognized to open on the committee amendment. [LB995]

SENATOR McDONALD: Mr. President and members of the body, there are a few components of the bill that the Nebraska Association of County Officials objected to, and on which we were able to compromise. They had some valid concerns about the extra resources counties would be required to expend for cemeteries under certain provisions of the bill. AM2118 addresses their concerns. The amendment clarifies that it is the county board that is to publish the notice of the cemetery maintenance petition under Section 12-807. It deletes a provision in Section 6 which states that minor or one-time maintenance shall not toll the 20-year time period. The thought is that this was a little too arbitrary. It removes, in Section 12-810, the requirement of four annual mowings. It takes the requirement back to one annual mowing but provides for additional mowings at the discretion of the county board and subjects requests for

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additional mowings to a public hearing. And finally, the amendment contains a revision requested by the Nebraska State Historical Society related to the State Cemetery Registry in Section 10, because they discovered the protection they thought was already available under the statute. Again, this is the compromise amendment in which all parties agree, and I would ask for your support. Thank you. [LB995]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the opening to General Affairs Committee amendment, AM2118. Members requesting to speak are Senator Louden. [LB995]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. I support this bill because I think it's up to us that are here on Earth now to look after what some of these pioneers went through, and some of these pioneer cemeteries that are scattered throughout the state. As you drive across the state there are many of those cemeteries that at the present time there aren't anyone left to take care of them, and some of the organizations have taken it on themselves to do something to try to clean them up a little bit, make them look a little bit better, and at least keep track of them so they're not used for other purposes, whether they run machinery through them or whatever. So this is something that I think is something that we can do quite well. It does put a little bit of a cost on the counties at times, but a lot of those cemeteries in the area where I am, the local people do that mowing and do that caretaking of those cemeteries, just mostly out of respect of the pioneers that came out there and settled the country to start with. So with this, since they've got the amendment in there and a compromise, I certainly support this bill. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Louden. Are there additional members requesting to speak? Seeing none, Senator McDonald, you're recognized to close. Senator McDonald waives closing. The question before the body is on the adoption of the General Affairs Committee amendment, AM2118, to LB995. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB995]

ASSISTANT CLERK: 33 ayes, 0 nays, on the adoption of committee amendments, Mr. President. [LB995]

PRESIDENT SHEEHY: AM2118 is adopted. (Visitors introduced.) Mr. Clerk, we'll move to the first amendment. [LB995]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA236. (Legislative Journal page 1115.) [LB995]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA236. [LB995]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if you look at this amendment, you will see that it will be found on page 3, in line 3. After the word "cemeteries" in line 3, and after the word "cemetery" in line 11 would be the words "and the inhabitants thereof." We're talking about the general welfare, and I think we should make it clear whose welfare we're talking about. If you have any questions, I'm prepared to answer them. But this is a very straightforward amendment, and I ask that you adopt it. Thank you. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening of FA236 to LB995. Are there members requesting to speak? Seeing none, Senator Chambers, you're recognized to close. [LB995]

SENATOR CHAMBERS: Mr. President, I almost don't want to do this, but I have to make a revelation. Let me read the language preceding my amendment, and I'll tell you one reason I'm doing this. We are moving very rapidly through bills. I have been tied up earlier in the session with matters that were of great important to me. I had to give much of my time to them. I haven't had any leisure time subsequent to that to read these bills and review them, and they have moved rapidly. That is not the fault of the introducer; it's nobody's fault that I haven't had the time. But by the time we get to Select File, I hope to have had a chance to review some of these bills and do a better job of maybe questioning or at least satisfying myself that the bills ought to have been advanced. But with this amendment that I'm talking about, it is referring to taxes and their use. I will go to line 8 on page 3. All taxes collected for...wait a minute. All taxes collected for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, management, improvement, beautifying, and welfare of such cemetery and inhabitants thereof. The inhabitants that I'm referring to are those who occupy the cemetery. And in addition to just covering the ground, we ought to be concerned about what is happening to those who are under the ground. So this amendment, whereas it may seem very frivolous--and it may be--is not completely as lacking in merit as it may seem. So I'm asking that it be adopted. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing. The question before the body is on the adoption of FA236 to LB995. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB995]

ASSISTANT CLERK: 30 ayes, 0 nays, on the adoption of Senator Chambers' amendment. [LB995]

PRESIDENT SHEEHY: FA236 is adopted. We'll move to the next amendment, Mr. Clerk. [LB995]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA237. (Legislative Journal page 1115.) [LB995]

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PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA237.
[LB995]

SENATOR CHAMBERS: Mr. President and members of the Legislature, on page 3, in line 6,...I have to get caught up to where I should be. After the word "collected"...I had numbered my amendments differently for consideration from the way they are on the gadget, but now I'm caught up with it. On page 3, in line 6, after "collected," I would insert "from cemetery residents." Let me read this. We're talking about taxes. Yesterday we talked about the tax on roads, didn't we? We talked about the gasoline tax. What did we call it? We called it a user fee, didn't we? We called it a user tax, didn't we? Now if there is to be a tax or a fee, should not that tax be paid by those who are to be benefited from the tax? That's what I'm contending. The tax should be paid by those who gain the benefits. So here is the way that language would read. There is to be a tax levied and I will start in line 4, upon the taxable value of all the taxable property in such city or village subject to taxation for general purposes. Then the tax shall be collected from cemetery residents. That is what the tax will be used for. Now somebody might want to raise a question and ask me to answer it, which became a rallying cry for the American Revolution--no taxation without representation. These residents of this cemetery do live in somebody's legislative district. They live in somebody's Congressional district, so they do have representation. Taxes cannot be levied unless they are levied by an agency, political subdivision, which is empowered and authorized by the statute to levy such taxes. So although you might call these people silent participants in elections, they nevertheless are represented, and if you come from places like Chicago or read about places like Chicago, you'd be aware of the fact that residents of cemeteries actually participate in elections. They actually do, and there are various federal and state agencies and commercial operations which are realizing that residents of cemeteries have credit cards and other indications of the ability and the authorization to participate in commercial transactions. So since the residents are doing all of these things, I believe that they are the ones who should pay this tax, in the form of a user fee, which goes to their benefit. So that's the amendment, and I will answer any questions that you have. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to FA237. Members requesting to speak are Senator Fulton, followed by Senator Friend and Senator McDonald. Senator Fulton, you are recognized. [LB995]

SENATOR FULTON: Thank you, Mr. President. The record doesn't reflect some of the communication that occurs on the floor, and as these amendments...as I read through these amendments I communicated a little something--nonverbal communication--to Senator Chambers, and I'm going to open up a line of questioning, hopefully to communicate some of that nonverbal communication here into the record. Would Senator Chambers yield to a question? [LB995]

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PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB995]

SENATOR CHAMBERS: May I respond in sepulchral tones, Senator Fulton? [LB995]

SENATOR FULTON: That would certainly be appropriate. [LB995]

SENATOR CHAMBERS: Since we're dealing with a grave subject. [LB995]

SENATOR FULTON: This is an area of grave concern. There's a maxim out there that I wonder, just to have people pay attention to this, that there are only two things certain in life, Senator. Would you be able to identify those two things? [LB995]

SENATOR CHAMBERS: Death and taxes. [LB995]

SENATOR FULTON: Indeed. There was an individual in our nation's history who also made some reference to these two items. His name was Patrick Henry, and you're very good at remembering quotations. Could you perhaps give me the quotation that might be on my mind? [LB995]

SENATOR CHAMBERS: I was there at the time, but I don't recollect that particular comment. [LB995]

SENATOR FULTON: Something to do with liberty and death. [LB995]

SENATOR CHAMBERS: Yes. [LB995]

SENATOR FULTON: Well, he said, give me liberty or give me death, and so I think if we were to adopt this amendment, that that statement, that quote, would no longer be operative, because in death one wouldn't necessarily be getting liberty, if indeed he was being taxed. So if we were to adopt this amendment, I think Patrick Henry's quotation would go into trash bin of history. So in that regard, Senator, I don't know if I can support this amendment, but I give you the opportunity to respond and I'd yield my time to Senator Chambers. [LB995]

PRESIDENT SHEEHY: Senator Chambers, you're yielded 3 minutes. [LB995]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Fulton. And now that my memory has been jogged, Senator Harms, had I been there at the time you can realize that I would be considerably older than anybody here at this time, and old folks are allowed to have moods and they're allowed to be forgetful. But having had my memory jogged by the young Senator Fulton, I do recall. And the statement was correctly quoted by Senator Fulton--give me liberty or give me death. Patrick Henry has

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been granted death. Senator Fulton feels that if this tax is levied and it is required to be paid by those who've departed, they will no longer have liberty. Not only, Senator Fulton, would they continue to have liberty, but they would be granted freedom, which they currently don't have. That would be the freedom to pay taxes as all the others of us, who are walking, talking, and living, enjoy that freedom. An amendment such as this does offer the opportunity to look at some items that are very serious and that are confronting us right now. And I just touched on, without intending to attack, a bill that we dealt with yesterday, which is doing something with which I disagree, but I didn't have the votes for my particular view to prevail. What I am doing here is slowing down a process which is moving very rapidly, and maybe it should, because maybe the bills we've dealt with are not of that great a consequence. But I am as serious as a heart attack in offering this amendment, and if you adopt it, what will be the harm? What will be harmed if you adopt this amendment? Perhaps Senator Friend will be able to point that out. [LB995]

PRESIDENT SHEEHY: One minute. [LB995]

SENATOR CHAMBERS: But Senator Fulton, I appreciate the time, and that's all of it that I will use at this point, because Senator Friend usually, especially from his standpoint, is one who studies economics, be able to shed some light on this subject. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Thank you, Senator Fulton. Senator Friend, you're recognized. [LB995]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I rise in opposition to this amendment. I probably should have let Senator McDonald go in front of me. I am on the General Affairs Committee, and we did hear...I've heard actually the last six years of my life the discussion in regard to the problem that we have here. It was interesting. Senator Chambers came up before we started here and he said, and I said this last night if you remember, I said we were moving at a breakneck pace. And I feel a little bit strange about it, because I've been out here on the record before telling everybody, this is going way too fast. Well, sometimes the stuff gets away from you. I had realized by the time we got to Senator Lathrop's bill, I hadn't fully read the bill yet. Now I'm not going to ask for a show of hands, but I would really be interested in seeing how many people actually had read his bill by the time we moved it to Select File. Well, of course, I stand up like a bobble-head doll and say, let's go ahead and move this to Select File, because we can save money. So I'm part of the problem, not part of the solution, right? Not necessarily. I think sometimes things do move too fast. I'm not saying they were this morning. This amendment is not necessary. I don't even know if he's going to carry it to its logical conclusion, but it should fail miserably, and I think he knows that. I would ask Senator Chambers if he would yield to a question? [LB995]

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PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB995]

SENATOR CHAMBERS: Yes. Yes, I will. [LB995]

SENATOR FRIEND: Senator Chambers, can you define...and I remember, I've talked about this on a couple of occasions, not only in hearings, but I've heard people talk about it...can you define a resident for me, as it would be defined in regard to the environment of a cemetery? [LB995]

SENATOR CHAMBERS: One who resides or occupies within the confines of the cemetery. [LB995]

SENATOR FRIEND: Okay, so it could be somebody that's actually alive, or somebody that's actually below the ground and deceased? [LB995]

SENATOR CHAMBERS: Quite right, quite right. [LB995]

SENATOR FRIEND: Well, I'm not saying you're wrong, but I would like (laugh)...if we're going to adopt an amendment like this, I'd like a clearer definition of what a resident is, because...anyway, the fun aside, I mean, look. I understand what he's doing, I know why. I'm not sure this is necessarily the bill that we could do it on. My point is, there are a lot...this isn't consent calendar today. There's a lot of stuff that's going to be happening all day long that will allow us to analyze and critique and everything else. If we chose to do some of that here, I guess that's fine. All I'm saying is, I don't necessarily agree with this amendment. I think we should vote it down. As a member of that committee, I think I know the direction we're going here. The second piece is, if we want things to slow down, I don't always think that we have to force that. If you look at this agenda, I think that's going to happen on its own. So that's all I really had, Mr. President. Thanks. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator McDonald, followed by Senator Christensen, Senator Erdman, and Senator Nelson. Senator McDonald. [LB995]

SENATOR McDONALD: Mr. President and members of the body, this is in the original language. This is not even in the amendment, but let me read to you what Senator Chambers would like to put into this statute. The tax shall be collected from inhabitants and paid to the city or village as taxes for general purposes are collected and paid to the city or village. All taxes collected are then...for this purpose shall constitute and be known as the cemetery fund and shall be used for the general care, maintenance, improvement, beautifying, and welfare of such cemetery. As far as I know, while we are alive we do pay taxes, but once we're dead, chances are we don't pay taxes anymore. And to be able to take money from people that have passed away to contribute to the

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cemetery fund so we can do the mowings that need to be done, isn't going to happen. And so in regards to Senator Chambers' amendment, I see what he's doing but in this situation, I think it draws attention to, we need to read the bills, we need to know what they're about. This one needs to be voted down because it certainly would destroy all the work we've done in I don't know how many years we've had interim studies. And if Senator Chambers wants to put together an interim study deciding how we can find that money from the people that reside in that cemetery, he's welcome to it. Thank you. [LB995]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Christensen, you are recognized. Senator Christensen. Senator Erdman, you're recognized. [LB995]

SENATOR ERDMAN: Mr. President, I think Senator Christensen was the victim of lights being turned on without representation, but I won't accuse anyone of that. (Laugh) There's a lot of fun that could be had with this. I mean, a resident of a cemetery, if a resident is not defined, could be one of those critters that runs around in the cemetery, and they don't have a vote either. I don't know that Senator Chambers in his love for animals would want to tax those poor little critters, because I don't know how we would get the money from them, and so if we get e-mails from the people for the ethical treatment of squirrels or something, that don't want taxation without representation, they may be throwing things into the cemetery, as others did in the Boston Tea Party. I am going to distribute for your own history lesson an article or a quiz that was put together in 2003, in which the senior member is one of the possible answers, and the other option that you have to choose from is Patrick Henry. And it came out of a piece of legislation that I had introduced, and then ultimately Senator Cornett introduced, but never became law, dealing with enhancement of students' in Nebraska's understanding of history in which Patrick Henry was to be a part of that legislation. So I'll distribute that and you can have fun with that. But as much fun as you'd like to have with this cemetery bill, the people that came and testified in front of the committee and have worked on this, it's not funny to them. They have a sincere interest in ensuring that these facilities are maintained, that their appropriate entities have responsibility. I share the reality of where we are today, and that is that we should be cautiously going forward with any legislation and not simply advancing bills just to advance them. And I think Senator Chambers is serving a valuable purpose this morning in at least slowing us down a little bit so that we can have that opportunity later this morning, because I know by the time we get to this afternoon, a lot of us will want to be able to be prepared for that discussion. So Senator Chambers, if you'd like to defend the honor of the squirrels and further define residents to not be nonhumans, that would be probably beneficial to a lot of those residents that also reside in the cemeteries. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Nelson, you're recognized. [LB995]

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SENATOR NELSON: Thank you, Mr. President, members of the body. Would Senator Chambers yield to a question? [LB995]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB995]

SENATOR CHAMBERS: Yes, I will. [LB995]

SENATOR NELSON: Thank you, Senator. Your amendment is proposing that the tax shall be collected from cemetery residents; is that correct? [LB995]

SENATOR CHAMBERS: Yes. [LB995]

SENATOR NELSON: All right. On large cemeteries around the state of Nebraska, there is generally a sexton who resides on the cemetery and probably his wife resides there. They work very hard to keep the cemetery maintained. They're generally underpaid; they're poor people. Is it really your intention to tax the residents such as sextons? [LB995]

SENATOR CHAMBERS: Not alone, but you are raising a legitimate issue based on the wording of the amendment itself. [LB995]

SENATOR NELSON: All right. That answers my question. Thank you, Senator Chambers. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Are there additional members requesting to speak on FA237? Seeing none, Senator Chambers, you're recognized to close. [LB995]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Christensen may have been the victim of somebody turning on his light, or he may be consulting with the ones who would be affected by this bill and he's trying to figure how to set up that communication. He may want to talk to a woman named Clare Voyant, because she's in that line of work and she has a friend named Sara Bellum, who is very brainy and might be able to lend a little assistance along that line, too. But a bill like this can serve this purpose because it's not controversial. It's one that ought to be enacted. Personally, when it comes to the dead, I don't have a great amount of attachment. But regardless of how I might feel, I do know how others feel about those who are no longer here. There was a woman a few years ago who died in the middle of winter on a bench at a bus stop across from the Department of Health--it was called HEW at that time, Health, Education and Welfare. She got more attention from ministers, from politicians, from charitable organizations than she ever got when she was alive. If somebody had noticed the dire conditions under which that woman was living--she was homeless, she was physically ill, she was mentally ill, her clothing was

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tattered, people had thought she should be arrested and removed, and that was their reaction, rather than seeing a fellow creature in need of compassion and assistance, she was ignored. But as soon as she became a corpse, that strange something about human beings kicked in, and everybody gave far more consideration to that corpse than they gave to the woman. They never would have dreamed of having the cops bring a paddy wagon and grab that corpse and pitch it inside. But had that corpse been a living woman, that's how she would have been dealt with, and maybe handcuffed. In many parts of this country, cemeteries are better managed, better cared for, than areas of the city where the living are found. Jesus once said, let the dead bury the dead. Those who are living should be concerned about those who are living. If taking care of the dead has a profound impact on the minds, the psyches, of those who are living, then I'll give that consideration. I'll respect it, but I do not feel any attachment to those who are dead. I have two sisters, younger, who both meant much to me while they were alive. Once they were no longer alive, all that I had was their memory. But they belonged to me more then, perhaps, than they did while they were alive. My mother has died, but I felt no attachment to her corpse. I did not attend her funeral. I don't go to funerals. What you're going to do with reference to a person ought to be done while that person is alive and can appreciate it. Everything else enriches the undertaker, caretakers, and people who do work mowing the lawns in cemeteries. One other point, then I'm going to withdraw this amendment. Then I have one following which I will take to a vote. If every cemetery were to have every stone, everything that separates one person in that place from the other removed, then would people feel an attachment for the cemetery? Would they look at that as a place where all the collective receptacles for what you all--some of you--believe are souls are now, but the souls no longer are there? So why does a corpse demand so much attention? There are people who have always benefited and profited from handling the dead, and they often play on feelings of guilt and remorse of the living and extort money from them. But that's all I will say on this amendment, and I withdraw it at this time. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. FA237 is withdrawn. Next amendment, Mr. Clerk. [LB995]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA238. (Legislative Journal page 1115.) [LB995]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA238. [LB995]

SENATOR CHAMBERS: Thank you, Mr. President, and this one I am going to take to a vote. On page 2 in line 3, strike and show as stricken the word "less" and insert "fewer;" and in line 7 strike "less" and insert "fewer." If you're talking about a certain quantity, you can say "less" or "more." But when you're talking about the units that make up that quantity, then it's "more" or "fewer." So since we're talking in the first sentence about a

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number of inhabitants, it should be fewer than that number of inhabitants, rather than less. I'm aware that when contests are advertised and they want you to make a statement, or if you're going to be allowed a short period of time to speak, they'll say, express your words in 50 words or less. It should be 50 words or fewer. And since there is a way that language is structured, since there is meaning that words have, it is not hurtful for us to craft our statutes in such a way that language is properly used. When we speak to each other, we don't use, or shouldn't, stilted language to try to impress people or overawe those who know no better. We use slang, we use idiomatic expressions which don't make sense if you analyze them, but they're understood by everybody. I would like to strike the word "less" at the two places they appear and insert "fewer." That amendment, I think, is understood. I happen to have a little rhyme here, which might touch on what we were saying, and Senator Friend, Senator Nelson asked a question, and Senator Erdman even elaborated by applying the principle with reference to the term "resident" to four-footed creatures. Here's a riddle...and I'm sure you've all heard a version of this. Here's a riddle simple and merry / Why is no wall around a cemetery? / First, because of their one-way route / Those inside cannot get out. / Second, all of the women and men / Who are outside don't want to get in. So you don't need a wall. I also have something that I feel a necessity to do when we talk about cemeteries and so forth. I had written this...it's a mortician's national anthem, and it's sung to the tune of "These Are a Few of My Favorite Things." And the foreword says, I was given a commission by a mortician to write a national anthem for those who do plant them, and you all know who are planted and who the planters are. And it starts...now I cannot sing well. But good singing is in the ear of the listener, as beauty is in the eye of the beholder, and I've stated that I'm often called a burglar of music, because I break into song. I don't know whether I'll break into song this morning. But anyway, every word in this is true. Corpses, condolences, flowers, a coffin, black-curtained hearse that they carry you off in, tombstones and epitaphs with verbal slings, these are a few of our favorite things. I'm speaking for the undertakers. Churches and eulogies, pallbearers, mourners, weeping and wailing in all the church corners, choirs droning dirges that make grown men cry, these are the things that take place when folk die. Fine embalming keeps the corpse fresh, add some makeup, too, then a good service lends just the right touch, and all of this waits for you. Graves freshly dug with stone vaults placed inside them, caskets are placed in those vaults that do hide them, florists, morticians, grave diggers and such, these are your servants who thank you so much. Row upon row rest the graveyard's residents, someday all out here will all be insiders, here is a truth which each person does know, we all shall help make that populace grow. When the last dirt tops the casket, and the grave is filled, we shall not gather again in this way, until someone else is chilled. Now what is it that causes the preoccupation that people have with death? If you studied the history of Egypt, there was a culture...there are tombs, monuments, methods of preserving corpses, which are astounding to those who are living today--all to honor, as they call it, and commemorate the dead. The world would be better off, society would have fewer mental illnesses, if there were not the pathological obsession with death. If you were told that a dead body

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is out on the lawn of this Capitol building, people would flock to it, not because they knew the person, not because they care about the person, but to see somebody in real life who is dead. I think that is unhealthy. I think it is unwholesome. What this bill is attempting to do I will not object to. But you see that good money must be spent, taxes must be raised for the dead. But in those counties and cities where there may be abandoned and/or neglected cemeteries of the kind being addressed by this bill, there are hungry people. Will a county raise taxes to feed them? Will the public consent to have taxes raised just to feed the poor? No. But a county will provide money to bury somebody who's dead and the family has no money to pay for that person, or in Douglas County, the cost of a cremation. Maybe if that amount of money were made available to somebody who was hungry, somebody whose children are hungry, perhaps enough sustenance could be obtained to prevent one of those family members from becoming a product that is handled in one way or another by an undertaker. But the living do not command this kind of concern. If I brought a bill designed only to help make medical care available for children who are not covered by insurance, it would be voted down. We know it, because those things have been done. If I were to say, let us make more food stamps available to those who are hungry, even though food stamp programs are administered by the Department of Agriculture and redound to the benefit of agriculturists in agricultural run legislatures, you'd see that voted down, because the hungry don't count. But the dead do. If we had a child standing here, tears running down her little cheeks,... [LB995]

PRESIDENT SHEEHY: One minute. [LB995]

SENATOR CHAMBERS: ...she's emaciated, her eyes are sunken, her nose is running, her clothing is tattered, and next to her is a corpse. The first one people would be drawn to is the corpse. You cannot disrespect bodies like this. We have laws against desecrating corpses, and they would be enforced before you would try to enforce some way to help dry that child's tears, wipe her nose, give her some decent clothes, and put some food in her hungry belly. That's the kind of thing that I think about when we have bills like this. But perhaps I'm the only one with those thoughts, so I would never think of trying to impose in any way my views on people who think that cemeteries and their maintenance are important. They may be of the warp and woof of this very society. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening of FA238 to LB995. (Visitors introduced.) Members requesting to speak to FA238 are Senator McDonald. [LB995]

SENATOR McDONALD: Mr. President, members of the body, the section that Senator Chambers is looking at was part of the original section that we didn't change. But we did add the amendment that mirrored the verbiage in the original section, so to go from "less" to "fewer" I think is kind of semantic, but I think it's a good way to use words, and I

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think Senator Chambers is legitimate in his concern for changing the word from "less" to "fewer." So please support the amendment. I think it's just fine. Thanks. [LB995]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Are there other members requesting to speak? Seeing none, Senator Chambers, you're recognized to close on FA238. [LB995]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator McDonald is exactly right, and that's why in the first part of the amendment it says you strike and show as stricken, because that word "less" is in the original statute. And when bills do come before us and I see language in the existing law that I think ought to be corrected, I will offer that correcting amendment. Another area where I will do this, and I think they're doing it more and more in Bill Drafting when it comes to them, we will be in a definitional portion of a statute and we will say such-and-such a word "shall mean." Well, we strike the two words "shall mean" and substitute the word "means," such-and-such means. So when I come across these archaic ways of expressing things, I will offer an amendment to correct it, and this amendment is in no way designed to take a shot at mirroring the language that already is in the statute. That ordinarily is done. I'm just kind of a stickler when it comes to some things, and when I see "less" where it ought to be "fewer," it's like somebody taking fingernails and dragging them over a chalkboard. It just does something to me, and Senator Schimek shares that failing, if a failing it is. I won't have anything else to say on this bill, and while speaking on this bill, obviously, I didn't have time to review any of the others. But because I have not commented on bills that have flown across to Select File, that should not be taken to mean that when those bills come before us again, I will not have something to say, and I may even have opposition. But because I'm not in a position to draft amendments, should amendments be needed, or to discuss in detail in a way that's meaningful some of these other bills that are going to fly across the board today, I will not attempt to amend them in the way I did with this bill, because I used Senator McDonald's bill to make the point. As I've stated, it's not controversial, and it will go anyway. Maybe, though, I should not say anything on any of these bills and let them all just go through, and then we won't have to stay late tonight. And won't those lobbyists be disappointed? They'll have all that food and no munchkins of a legislative stripe to eat it, and maybe if it's handled in a way that is sanitary and healthful they can deliver it to one of those entities in Lincoln which will feed the poor. I'm sure it never occurs to the lobbyists to feed the poor, who really need some help and sustenance. They'd rather give to those who have. And Senator Carlson is not here, but in his absence I'll say this: Jesus once said, to him that hath shall be given; from him that hath not, shall be taken even that which he seemeth to have. And another way to say it: the rich get richer, and poor get poorer. So if those lobbyists on one of these days could be prevailed upon by my colleagues to forego that free meal and tell them to give it to one of these programs or make the money available to one of these programs that will feed the homeless and the hungry, for that day I would not criticize them and I would give them credit. I would

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say for once, the vulture has become a bluebird. Thank you, Mr. President. [LB995]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing. The question before the body is on the adoption of FA238 to LB995. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB995]

ASSISTANT CLERK: 30 ayes, 0 nays, on the adoption of Senator Chambers' amendment, Mr. President. [LB995]

PRESIDENT SHEEHY: FA238 is adopted. We'll return to floor discussion on the advancement of LB995. Senator McDonald, no members requesting to speak. You're recognized to close. [LB995]

SENATOR McDONALD: Mr. President and members of the body, we've had a healthy discussion this morning, a lot more discussion than I thought we were going to have, and I think we've got the bill in its form right now that we can move forward without much controversy. So please support LB995. Thanks. [LB995]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You have heard the closing. The question before the body is on the advancement of LB995. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB995]

ASSISTANT CLERK: 31 ayes, 0 nays, on the motion to advance the bill, Mr. President. [LB995]

PRESIDENT SHEEHY: LB995 does advance. Next item under General File. [LB995]

ASSISTANT CLERK: Mr. President, LB745 was introduced by Senator Aguilar. (Read title.) The bill was read for the first time on January 9 of this year, referred to the Government Committee. That committee reports the bill to General File. There are no committee amendments. [LB745]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Aguilar, you're recognized to open on LB745. [LB745]

SENATOR AGUILAR: Thank you, Mr. President, members of the body. LB745 exempts from the State Personnel System the chief executive officer of each facility operated by the Department of Correctional Services and the medical director for that department. All personnel employed by the department as pharmacists, physicians, psychiatrists, or psychologists are also exempted. The Department of Corrections employees covered by this bill have the choice of whether to opt out of the State Personnel System. If an individual decides to remain part of the State Personnel System, the position would only be filled as a discretionary position when it becomes vacant. If the individual decides to

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opt out of the State Personnel System, they become employees under the discretion of their director in terms of pay, personnel policies, and grievances procedures. The department believes this legislation is important to provide more flexibility in the management of its operations and would allow the department to appoint key individuals. Also the department has had difficulty retaining personnel such as pharmacists, physicians, and psychologists. By allowing these physicians to be exempted from the State Personnel System, the department will be able to pay competitive wages. The Department of Health and Human Services already exempts such personnel, which makes it difficult for the Department of Correctional Services to compete for these positions. At the hearing the department stated it is unable to hire and retain an adequate number of pharmacists, causing the department to contract for pharmacy services at nearly double the cost of the DCS pharmacists. Currently, the department has four positions for pharmacists, but only one of those positions is filled. The state's Ombudsman testified at the hearing, calling the situation acute. Mr. Lux gave the committee a brief history of medical care in the Nebraska corrections system. He concluded the situation is getting better, but there have been repeated problems in retaining certain medical staff. Mr. Lux believes this bill is important to help the department hire and retain key medical personnel. The committee advanced this bill on an 8-0 vote. I urge your support of this important legislation. Thank you, Mr. President. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. You have heard the opening to LB745. Members requesting to speak: Senator Synowiecki. [LB745]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members. Senator Aguilar, would you yield? I just have a couple questions. [LB745]

PRESIDENT SHEEHY: Senator Aguilar, would you yield? [LB745]

SENATOR AGUILAR: I will. [LB745]

SENATOR SYNOWIECKI: I guess my first question, Senator Aguilar--I appreciate you bringing this bill--is, why can't we within the confines of the collective bargaining agreement...all other state salaries are negotiated, and the market for certain positions and so forth plays a role. Why can't we successfully do this within the confines of a collective bargaining agreement? In other words, why do we have to have an opt-out for these employees? [LB745]

SENATOR AGUILAR: Well, we find that in many situations they have tried to reach an accord, and it hasn't been successful. So they're looking at the cheapest and the easiest way to work around this, and this seems like a logical situation and hopefully, the most effective. [LB745]

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SENATOR SYNOWIECKI: Well, here's what I would like to try to understand. You have the classification of psychologist, pharmacist. It's obvious we're having trouble attaining and retaining positions in that professional capacity. Why not, through the confines of a collective bargaining agreement between the state and the union...can the state then offer additional...a more lucrative salary package? I'm sure the union would agree to that, those elements, and then we could maintain them as collective bargaining employees. [LB745]

SENATOR AGUILAR: Well, I think if they would, that would have happened in the past. But many times, as you well know, when the union is doing collective bargaining, they just don't work on that one issue. They'll want to try to tie a lot of other issues into it at the same time, and even at the hearing there was testimony from the official who was actually opposed to this at the time, because he thought there were other areas of state government where the negotiation would have been assisted if he was able to use this as a bargaining chip, if you will. [LB745]

SENATOR SYNOWIECKI: Thanks, Senator Aguilar. One additional question. I want to affirm that the employees themselves had the ability to elect to maintain their nonexempt status. In other words, if they move to an exempt status, it will be their decision. [LB745]

SENATOR AGUILAR: Yes, it will. They can opt out by their own choice or stay where they're at. [LB745]

SENATOR SYNOWIECKI: Okay, thank you. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Senator Chambers, followed by Senator Howard. Senator Chambers, you're recognized. [LB745]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if you would look at the existing language in the green copy of the bill, you'll see that similar type positions are filled by people who are exempted from being members of this personnel system. If you go to the paragraph immediately below the new language on page 4, you will see all personnel employed as pharmacists, physicians, psychiatrists, psychologists, service area administrators, or facility operating officers of the Department of Health and Human Services. People in other departments are not covered by that personnel system. The director of Behavioral Health of the Division of Behavioral Health, the director of Children and Family Services of the Division of Children and Family Services, those people are not covered. The chief medical officer, established under a certain section of statute is not covered. So what you're talking about here are not rank-and-file or line employees who need to be members of a collective bargaining unit. You're talking about people holding the types of positions where they really ought to serve at the pleasure of the one whose job it is to hire. That

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does not mean that for an illegitimate reason somebody can be fired who serves at the pleasure of whoever hired. For example, if a female is hired as a pharmacist, she couldn't be fired at the whim of the head of that department because she's a female, or any of those reasons that are considered illegitimate. But these types of positions are at a level high enough where they need not, and in my opinion, should not be covered under the personnel system. So I'm going to support this bill. It is one that I haven't had a chance to examine as carefully as I wanted to, Senator Aguilar, but fortunately for me, the amendatory language is in the provisions within the provisions of statute which already cover similar positions and have exempted those positions when they fall within other departments of government. So I don't feel uncomfortable about supporting this, because I've heard no complaints of any kind from any of these currently existed positions, or the people holding these currently existed positions. Thank you, Mr. President. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Howard, followed by Senator Pedersen. Senator Howard, you're recognized. [LB745]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I wonder if Senator Aguilar would grant me a few questions? [LB745]

PRESIDENT SHEEHY: Senator Aguilar, would you yield? [LB745]

SENATOR AGUILAR: I'll be happy to if you'll speak up a little bit. I'm having trouble hearing you. [LB745]

SENATOR HOWARD: All right. I'll try to be. I'll try to make more noise. Senator Synowiecki's questions stirred some questions for me and I think we really need to look at this. I'm wondering who brought this issue to you. How did this become a concern? [LB745]

SENATOR AGUILAR: This was brought to me by the Department of Corrections. [LB745]

SENATOR HOWARD: The Department of Corrections. [LB745]

SENATOR AGUILAR: Yes. [LB745]

SENATOR HOWARD: And when they brought this to you, what was their core issue? What was it that they were trying to address through this? [LB745]

SENATOR AGUILAR: Well, the biggest problem that they had was not being able to hire enough people in these types of positions, not being able to staff Corrections in a manner that is beneficial to the safety of the people within Corrections. And if you'll

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remember years ago, maybe you weren't here, Senator Chambers and I were here at the time, there was quite a to-do, quite a blow up about the lack of medical care in some of our facilities and how we had ignored it over these years, and let me tell you that the Legislature is the one that caught all the flak on that and I certainly don't want to see us in that position again because we chose to ignore something like this. [LB745]

SENATOR HOWARD: Well, I appreciate that. And I'll have to say I'm having a little trouble hearing you myself. Maybe we'll have to move closer to one another. [LB745]

PRESIDENT SHEEHY: Senator Howard, if you'd hold on a minute, we'll turn the speakers up and then we'll let you continue. Okay, it's up now. [LB745]

SENATOR HOWARD: Oh thank you, an electronic remedy. (Laugh) Thank you. I can remember...and, no, I wasn't here at the time when that particular situation occurred, but I do remember years ago when the state employees, prior to having a union, were under a merit system and that was a very subjective system. That was probably the very early seventies when that changed and the workers voted to unionize, and there were good reasons for that. I want to be clear that this will in no way affect the union that's in place or the bargaining agreements. I have concerns that we not...that we not respect the bargaining union that is in place and in any way try to circumvent that. Do you feel that there's a possibility, with this legislation, of that happening? [LB745]

SENATOR AGUILAR: No, I don't think so. I really don't. And, you know, the other side of it is, we talked about it in the opening and Senator Chambers was, you know, very clear in clarifying how right now other Departments of Health and Human Service have the ability to do this and, therefore, some of the people that we would want in the positions in Corrections are leaving and going to other departments, leaving the shortfall in place in Corrections. [LB745]

SENATOR HOWARD: Okay. Well, I appreciate the information and I'll certainly look at this. Thank you. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Pedersen, you're recognized. [LB745]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. Just a few seconds that I want to say the Department of Corrections...and want to back up, Senator Aguilar's bill here, that the Department of Corrections only has the two pharmacists working for them so they're...and they cannot get pharmacists for what they're paying, so they're paying twice as much by bringing the temporary staff in. This is a fiscal thing that we need to straighten out for them and I hope that you understand that and will support the bill. Thank you. [LB745]

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PRESIDENT SHEEHY: Thank you, Senator Pedersen. I would just remind senators to please keep your side conversations to a minimum so members on the floor can hear. Senator Chambers, followed by Senator Synowiecki. Senator Chambers. [LB745]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, those of us trained in the law but not hidebound will recognize the value of precedent or those decisions and actions taken at a prior time which still withstand scrutiny and analysis. They can become a guide in dealing with an issue that we're presently confronting. So if you look at the existing language in the law on page 5 of this bill, there's a clear explanation of why we are doing what we're doing here, and why it's done with reference to any agency which will be hiring. Quote, beginning in line 6 on page 5 of the existing law: "The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head." When you are restricted in what you can pay, you get the leavings. You are justified in being suspect, even if you need people to fill these positions, you can be suspect towards somebody who's going to take this position at such a low salary when on the open market they can command so much more. Very few people are altruistic enough to say that I am so dedicated to my profession, my craft that I'm going to do it at less than what the going rate is because I think it is the right thing to do, it fulfills me, and I feel better at the end of the day. No, you get what you pay for, they say. I say you're lucky if you get what you pay for; you usually get less. So if you get less than what you pay for usually and you're going to start off getting what may be deemed the leavings, then you may have a problem. I say again, if anybody wants to take the time to look at some of the pages that precede this amendment, and there are only two of them, two pages of text, and then the material following that amendatory language, you will see the number of agencies of state government doing this already. This has nothing whatsoever to do with a bargaining unit. To show you how it will work, if the people who currently hold these positions want to remain covered as they are now by the personnel system, they stay there as long as they have that job. When they leave that job, under this amendment it becomes one of those discretionary positions where the director then can act under this new language, recruit and hire, offer salaries and whatever else may be necessary, naturally, within reason, to bring the caliber and type of person necessary to fill the position and do the job. Senator Aguilar, as little attention as our colleagues are paying overall, with the trust and confidence they have in you, I believe this bill is going to advance, but I still think it was good that... [LB745]

PRESIDENT SHEEHY: One minute. [LB745]

SENATOR CHAMBERS: ...we had the discussion so that if at a future time anybody wonders what our intent was in adopting this language, emphasizing that it in no way

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impedes or undermines a bargaining unit, that it does not require people who currently are covered in one of these positions to become uncovered through the operation of this law, then I think the debate is good. But if a person chooses to become uncovered, that can be done. If they have a person temporarily hired and that person chooses to become uncovered and become permanent with a decent salary, that can be done too. Thank you, Mr. President. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Synowiecki, you're recognized. [LB745]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Senator Aguilar, I just have another quick question or two. [LB745]

PRESIDENT SHEEHY: Senator Aguilar, would you... [LB745]

SENATOR AGUILAR: Yes. [LB745]

SENATOR SYNOWIECKI: And let me say I agree with what you're intending to do. I think this is important legislation. I just...when we move to exempting employees, I don't think it's something we should do lightly. And what Senator Chambers was alluding to was that these current individuals in these positions can stay there as a...but I'm not reading that. I was here when we...if you look at the green copy of the bill on page 4, beginning in line 12, I'll give you a second to look at that. I remember specifically doing this for the deputies and examiners of the Department of Banking and Finance, and Department of Insurance, as set forth in Sections 8-105 and 44-119. But then there's a sentence that goes on line 14, Senator Aguilar: "except for those deputies and examiners who remain in the State Personnel System." That one sentence that begins on line 14, the exception sentence, is not...for the employees you're speaking of I'm not seeing that. Is that in another area of the green copy? [LB745]

SENATOR AGUILAR: Yeah, would you look on page 5, Section 3, Senator Synowiecki. [LB745]

SENATOR SYNOWIECKI: Page 5. [LB745]

SENATOR AGUILAR: Section 3. [LB745]

SENATOR SYNOWIECKI: I see. But that's not new language. Do you have any...I'm sorry, maybe we should have done this off the mike. Why then do we put that exception language in for the deputies and examiners of the Department of Insurance? You may or may not know that. I know your legal counsel was probably a part of that. We put specific exceptions language in for...when we did this the last time I was here, but we're not doing it this time. Is there any... [LB745]

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SENATOR AGUILAR: Legal counsel informs me strictly because we didn't think it was necessary. [LB745]

SENATOR SYNOWIECKI: Okay. Thank you, Senator. So you...so, for the record, those individuals that currently are in the system working in these positions that you're going to exempt, can remain in the collective bargaining unit. [LB745]

SENATOR AGUILAR: That is precisely right, Senator Synowiecki. [LB745]

SENATOR SYNOWIECKI: Okay. Thank you. Thank you, Senator Aguilar. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Are there additional members requesting to speak on the advancement of LB745? Seeing none, Senator Aguilar, you're recognized to close. [LB745]

SENATOR AGUILAR: Just briefly to say, you know, I appreciate the dialogue. I appreciate the discussion. It's always refreshing to know that somebody else has an interest in these areas and wants to make sure everything is as good as it can be. I especially want to thank Senator Chambers for his clarification of some of the knowledge. Nobody actually does it better than he does, so it's been very helpful and I appreciate his assistance and I'd urge everyone to advance this to Select File. Thank you, Mr. President. [LB745]

PRESIDENT SHEEHY: Thank you, Senator Aguilar. You have heard the closing. The question before the body is on the advancement of LB745. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB745]

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB745]

PRESIDENT SHEEHY: LB745 advances. Next item in General File. [LB745]

ASSISTANT CLERK: Mr. President, LB1082, introduced by Senator Cornett. (Read title.) Bill was read the first time on January 22 of this year, referred to Business and Labor. That committee reports the bill to General File with committee amendments. (AM2252, Legislative Journal page 886.) [LB1082]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB1082. [LB1082]

SENATOR CORNETT: Good morning, Lieutenant Governor and members of the body. Before I open specifically on what the bill does, I want to urge the body to listen

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carefully. This is a new idea in the state of Nebraska. It is something that other states have done already. There is a lot of statistics and data and information involved in this bill and we will be carefully going over each aspect of that, so I urge the body to listen to the details and listen with an open mind. Thank you. LB1082 is to address on-the-job injuries suffered by first responders and by persons who are witnesses or are victims to violent criminal acts. Before I explain what the bill does, I believe I must give you a brief overview of existing law in Nebraska. The Nebraska Supreme Court, in Zach v. Nebraska State Patrol, 273 Neb. 1, 2007, determined that a compensable injury caused by an occupational disease must involve some physical stimulus constituting violence to the physical structure of the body. Injuries to the psyche which did not involve physical trauma were held to be noncompensable. So if you experience a physical trauma which results in a physical injury, the injury is compensable. What this means is, if you are at work and you fall and break your leg, you are eligible for workmen's compensation in this state. The court also determined if you experience a mental trauma which results in a physical injury, the injury is compensable. It did also determine that if you experience a mental trauma which results in mental injury, the injury is not compensable. It is the intent of LB1082 to create a limited exception to the ruling in the Zach case, and let me stress "limited," to allow these mental injuries, in the absence of physical trauma, to be compensated when such injuries are suffered by first responders and persons who, in the scope and course of their employment, are witness and/or are victims of a violent criminal act. The basic premise of my bill is that mental injuries are real. They can be every bit as painful and debilitating as a physical injury. They can cause loss of work just as easily as a physical injury and, like physical injuries, they can be treated. With treatment, an injured worker with mental injuries can heal and can return to work. Police fighters, crime lab technicians, EMTs, as a society we expect these people to go out and handle tough situations that the rest of us do not want to deal with. They know what their jobs are when they're hired and they go into their professions with open eyes. But sometimes it's extraordinary even for these...situations are extraordinary even for these highly trained individuals. To give you an example of a personal experience, when I was a police officer, on more than one occasion I had to work a scene of a person that had been struck by a train. In one particular instance, myself and a crime lab technician walked over a quarter of a mile of track collecting individual body parts. Recent events just in the Omaha area include the Westroads Von Maur shooting, the quadruple murder/suicide, the recent case where a mother died and her infant starved to death before either were found. Von Maur customer service workers went to work on December 5 expecting Christmas customers. They did not expect to spend the afternoon hiding from a gunman, watching their coworkers and customers die in front of them. LB1082 creates a narrow exception to the rule in the Zach v. State Patrol case. It will not apply to a large number of cases, but in those cases where it does apply it could literally be a lifesaver. This bill complements the overall goal of workers' compensation, which is getting employees back to work for a treatable injury. There are committee amendments and, as I stated in my opening, there is a lot of information, including information on the fiscal note, that I will discuss with the body, but I would like to open

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on the committee amendments and then the further amendments that have been filed. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to LB1082. (Visitors introduced.) As noted, we do have a Business and Labor Committee amendment, AM2252. Senator Cornett, you're recognized to open on committee amendment. [LB1082]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. The committee amendment is a white copy and would rewrite the bill. During the hearing, several questions were asked regarding the limitations and how they would be applied. The committee worked to consolidate and clarify the intent behind the original LB1082. The committee amendment does not expand benefits beyond what is contemplated in the introduced version of LB1082. At least 30 other states have some form of compensability for mental injuries caused by mental stimuli. We looked to these other states for guidance in drafting the committee amendment, and we ended up following South Carolina's lead, which was the most narrow definition that we found. But in our version, we further limited recovery to first responders and in the event of other employees to have witnessed or been victims of a criminal act that they may, too, recover. A mental injury is compensable if the employee establishes, by a preponderance of evidence, that the employee's employment conditions causing the mental injury or mental illness were caused by extraordinary and unusual in comparison to the normal conditions of the particular employment, and the employee establishes by preponderance of the evidence the medical causation between the mental injury and the employment conditions through medical evidence. We have also clearly defined in the committee amendment the following mental injuries arising from normal employer and employee relations are not compensable. Any injury caused by personnel actions by the employer, such as a disciplinary action, work evaluations, transfers, promotions, demotions, salary reviews or termination, are not compensable. The gatekeeper on this bill is the criminal act. Finally, there were questions during the hearing as to who qualifies as a first responder. In the committee amendment, we define first responder as firefighter, law enforcement officer, crime scene investigator, paramedic or an emergency medical technician. I am offering another amendment to define...further define first responders and I will address that when I open on that amendment. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the Business and Labor Committee amendment, AM2252. Mr. Clerk, we'll move to the first amendment to committee amendment. [LB1082]

ASSISTANT CLERK: Mr. President, Senator Cornett would offer AM2550 to the committee amendment. (Legislative Journal page 1115.) [LB1082]

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PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2550.
[LB1082]

SENATOR CORNETT: AM2550 is an amendment to improve the definition of first responder. In the committee amendment, we inadvertently let out what is classified as a first responder under the Emergency Medical Services Act. By referencing the Emergency Medical Services Act we are including four classifications of personnel. They include first responder, EMTs, intermediate EMTs, and paramedics. They are all trained, licensed caregivers who should be covered under this act. I urge the body to support this amendment to the committee amendment to correct the oversight on my part. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening of the amendment to committee amendment, AM2550. Members requesting to speak are Senator Lathrop, followed by Senator Preister, and Senator Wightman. Senator Lathrop. [LB1082]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. I rise in support of LB1082 and I thought it might be appropriate on the first occasion that I have to speak on this bill to give the body a little bit of a background on work comp generally, since I've spent an awful lot of the last 30 years working in that area, just so that you have some sense or some perspective on what's being offered today with LB1082. Work comp is a social contract between employees and employers, and it grew out of the Industrial Revolution. And years ago if you were hurt at work you could sue your employer and make a claim for personal injuries, medical expenses, pain and suffering if you could prove the employer was negligent. That meant that some people who could prove negligence would make a significant recovery, and those employees that were hurt without the employer's negligence would make no recovery. And that led to some inequalities that were attempted to be ironed out with the workers' comp statutes, which quickly spread across the 50 states. Now we have a system in work comp in which employees who are injured at work in the scope and course of their employment, and it has to be related to their work and their efforts, are entitled to work comp benefits. These work comp benefits are substantially less than what they could get if they were permitted to sue their employer, and so the trade-off, as the law evolved, the trade-off is everybody who is hurt at work in the scope and course of their employment can make a claim for benefits that I'll describe in a minute, and those who were hurt because of a coworker's negligence or even because the boss took the safeguards off of the machine, they don't get to sue for their injuries against a clearly negligent employer; all they get is work comp benefits. And that limitation that limits them to work comp benefits is called the exclusive remedy rule, which means if you're hurt at work the only claim you have against your employer is for work comp benefits. Let me take a second and tell you what work comp benefits are if you are hurt in the scope and course of your employment, but understand to qualify for work comp benefits you have to be working at

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the time, engaged in some effort for your employer, and something about that effort and your work has to be the cause of your injury. We call that injury in the scope and course of your employment. That's a little background on work comp. If you're hurt, this is what happens. And the typical example is an injury to a joint or a knee. If you're hurt at work, these are the benefits that you're entitled to. You're entitled to have the medical expenses related to the treatment of that injury paid to you. Okay? So if you go in to see the doctor, the bill is paid, no copay, no deductible, the bill gets paid. So work comp insurance carriers have to pay the bill. The second thing they have to do is, if you can't work while you're convalescing, they have to pay you two-thirds of your average weekly wage while you're getting better. That's called temporary total disability benefits. Once you can go back to work, those benefits stop. And then the last benefit...there's two more benefits. The next benefit is if you have a permanent injury of some kind, typical example is a back injury with a herniated disk, if you have a permanent injury and it affects your ability to earn income, you're entitled to be compensated for your loss of earning capacity. Unless you are totally disabled, the most benefits, indemnity benefits, that you can get is 300 weeks. The last...I'm simplifying this a great deal, but the last benefit that you're entitled to is called vocational rehabilitation. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR LATHROP: So if you hurt your back and you work construction and now you can't do that, you're entitled to some job retraining. So the point...the purpose of work comp is to rehabilitate the injured worker physically and to rehabilitate them vocationally so that they can get back to the workplace, get the care they need and some guidance on their next career, if that's necessary. That's an overview. I'll talk on the next occasion about what this bill does versus a physical injury, and why I think it is important to the people who we trust to be on the scene first when there is a calamity in our communities. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Preister. [LB1082]

SENATOR PREISTER: Thank you, Honorable President, friends all. I support the amendment to the committee amendment and to the underlying bill, and appreciate the information that Senator Cornett gave to us and the additional information that Senator Lathrop provided to us. I think this is important because I think we have a far greater understanding today of what these traumatic events do to people and to their psyches. In early years, in war, where people were subjected to great trauma, when they finally discovered that men were not just machines and that trauma affected them at a deeper level, they began to call it shell shock. They didn't really understand it. They didn't exactly know what it did, but they knew there was some effect. Later they kind of sanitized it. They began to understand a little more and, instead of calling it shell shock, they called it battle fatigue--you were fatigued from the experience. Again, the goal of the military was to acknowledge that maybe something happened, but the cure was to

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get you back into battle as quickly as they could. If you were back into the situation, you would get over it. You experienced something but it wasn't that difficult. The whole idea of the military, and then it was particularly men, was that you could deal with it and just be a man; just suck it up and go forward. There was essentially a denial that you were somehow traumatized by these events and that you had feelings regarding them. It wasn't until the Vietnam War that we began...and we were still in denial that there were really long-term effects, but finally after more and more of the soldiers, returned from Vietnam, had this experience and doctors began to look at it more seriously and as they studied and worked with these traumatized veterans, they came up with another name. They called it posttraumatic stress disorder. They have come to realize that it is treatable, but it is more successful in that treatment by getting to people early on. The Vietnam veterans had long delays, as did other veterans, and it isn't only veterans that experience this. People in law enforcement, firefighters, the first responders are certainly in similar kinds of situations, as are individual citizens who aren't in those roles, but I use the military example because that's where most of the studies, most of the learning, most of the understanding has come from. Today we understand that early treatment is important. Like with anything, the sooner you get to the person the less the injury, the mental injury festers, gets worse and creates and almost feeds on itself internally. We know early treatment works. We have a much greater understanding of how it works. There are psychotropic drugs that can aid in that process, as well as other modalities of treatment. They can be successful. But if we go with the old military model of forcing people back onto the job, ignoring that something traumatic has happened, the problem only gets worse. The person is less effective on the job. They're less effective in their home. The anger, the fear, the guilt, all of those emotions that go on inside the person, that churn at them, come out in negative ways, usually anger. It affects the relationship with the family. It affects the employment relationship, leads to hostile outbreaks that can damage the employment altogether. I think this is a good investment in the workers because it recognizes... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR PREISTER: ...that there is a problem, just as the treatment in PTSD now says, you were exposed to a traumatic illness and you had a correct reaction by reacting the way you did; not an incorrect, not an immature, not a baby kind of reaction. A normal reaction to trauma is to feel emotion, to feel fear or outrage or whatever is being felt. I think this bill is an acknowledgement of that trauma, a recognition that there's an opportunity for healing, and it provides some time and resource to do that healing, to get the injured worker back on the job. Thank you very much. [LB1082]

PRESIDENT SHEEHY: Thank you, Mr. President. Members requesting to speak on AM2550: Senator Wightman, followed by Senator Fulton, Senator Lathrop, Senator Burling and others. Senator Wightman. [LB1082]

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SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I do have some questions I would like to ask Senator Cornett, if she would respond. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR WIGHTMAN: Senator Cornett, I'm looking at these fiscal notes on LB1082 and there are two different ones, one dated February 8 and a more recent one dated March 10. The original fiscal note showed that the expenditure of General Funds would be about \$8,360,000, and then that appears to have been revised by the March 10, 2008, fiscal note. Is that your understanding? [LB1082]

SENATOR CORNETT: Yes, and I was going to speak to the fiscal note later and I have quite a number of points to make on that. When we put the amendment in to restrict...further restrict the people that would be qualified for this, it changed the fiscal note to the point that the Department of Administrative Services took the data that they had, expanded it out to the most broadest sense. So every time basically a person was exposed to a criminal act, no matter what that was, including, oh, shoplifting, and then "timesed" it by two, that is where they came up with the fiscal note. But we feel that it is much, much less than that, and they acknowledged that the fiscal note is not what it should be. In the research that we have, only about 2 percent of workers' comp cases that are filed are going to be filed under this. We are waiting for data from South Carolina, and we've requested it, in regards to what their fiscal note was for their self-insureds. We have the data from the insurance companies, but in regards to the self-insureds we're still waiting on that data. And we do have a meeting with the Governor's Office this afternoon, and Policy and Research, to work on the fiscal note with the data that we are receiving. [LB1082]

SENATOR WIGHTMAN: When you say that you think the fiscal note is substantially higher than what you believe... [LB1082]

SENATOR CORNETT: No, substantially less. [LB1082]

SENATOR WIGHTMAN: No, the fiscal note is higher than you believe the fiscal impact will be. [LB1082]

SENATOR CORNETT: Considerably. [LB1082]

SENATOR WIGHTMAN: Okay. [LB1082]

SENATOR CORNETT: What they did was take all incidences times two employees, and we've only...from our data research we found that only about 2 percent of the...point 2,

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pardon me, my legal counsel is a little bird in my ear telling me the truth here, .2 percent of all claims will be mental claims. [LB1082]

SENATOR WIGHTMAN: And I'm looking particularly at the last page of the fiscal note and they give a tremendous range... [LB1082]

SENATOR CORNETT: That's correct. [LB1082]

SENATOR WIGHTMAN: ...on the General Fund. They show a range from \$1,940,000 to \$14,154,000. When you say that the impact will be less than the fiscal note, are you talking about the high end of the range, the low end, or the medium? [LB1082]

SENATOR CORNETT: We're talking about the very low end of the range, and we're waiting for data from the state that is most comparable to us, which will be South Carolina. Other states have found that it has not been a tremendous fiscal impact at all, but Department of Administrative Services had to base the fiscal note on the worst possible case scenario until we get hard data. And in my opening on the fiscal note I was...I want to urge the body that we are working on getting an accurate fiscal note between now and Select File, and do have meetings set up and have requested information from other states that have enacted this. [LB1082]

SENATOR WIGHTMAN: I'm assuming...and I'll continue with my line of questioning, if I might, one of the reasons, it would appear to me, for the wide range of fiscal notes is that determining the extent of this mental injury or illness is subject to a great deal of subjectivity. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR WIGHTMAN: Would you agree with that? One minute? [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: No. No, I would not, particularly under the people that are not in the first responder category. That is why we have the gatekeeper basically written in that it has to be a violent criminal act. An example would be Von Maur. There's been only one incident of like something similar to that nature in Nebraska. For first responders, there are very, very few mental claims. Most first responders are trained and are able to cope with it. It is only in a small number of circumstances that something particularly damages them or they need to seek help. [LB1082]

SENATOR WIGHTMAN: Thank you, Senator Cornett. Thank you, Mr. President. [LB1082]

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PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Fulton, you are recognized. [LB1082]

SENATOR FULTON: Thank you, Mr. President. Would Senator Cornett yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR FULTON: Okay. I have a number of questions, Senator, and I will try to get them here in the five minutes. This particular amendment, "out-of-hospital, emergency care provider," can you define that? What is...what are we talking about there? [LB1082]

SENATOR CORNETT: We are talking about, with the amendment, the first responders under the Emergency Medical Act. I have the statute definition of that, 38-1208, Out-of-hospital emergency care provider: "Out-of-hospital emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act." So that would be paramedics, firefighters, EMTs. Hospital workers would have to have the qualifying event, which would be the violent criminal act. [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR CORNETT: And I can provide you a copy of that statute, if you would like to read that. And then... [LB1082]

SENATOR FULTON: Okay. I'll read through it some more, but this is...these out-of-hospital emergency care providers, would they already fall under the category of a first responder? [LB1082]

SENATOR CORNETT: Yes, but we had to... [LB1082]

SENATOR FULTON: But this just clarifies. [LB1082]

SENATOR CORNETT: ...we had to follow what was already in state statute... [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR CORNETT: ...definition, so what we...we had wrote our own definition of first responder. For emergency care provider, we had to go back to... [LB1082]

SENATOR FULTON: Okay. [LB1082]

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SENATOR CORNETT: ...the current act, and I have both of those in my hand for you. [LB1082]

SENATOR FULTON: Okay, understood. Thank you, Senator. The... [LB1082]

SENATOR CORNETT: That's why the... [LB1082]

SENATOR FULTON: ...the amendment, so AM2550 to AM2252, I'll deviate a little bit, because AM2550 has something to do with AM2252, and ask you some questions on the amendment itself. The fiscal note, Senator Wightman touched on it so I won't revisit, but help me to understand what would be...give me an example, I guess. I'm having a hard time comparing what a state employee might suffer by way of a mental or a psychological injury that a first responder might be exposed to. Could you give me an example of what a state...a state employee that would fall under the purview of this fiscal note might experience? [LB1082]

SENATOR CORNETT: Well, to give you an example, I believe it was last year a notable psychiatrist at the Lincoln Regional Center was beaten to death by a person in the center. If one of his colleagues had witnessed his murder in the workplace, he would be able to seek counseling for that event if he was having emotional or psychological issues relating to that. [LB1082]

SENATOR FULTON: Is that fall...would that comprise what the fiscal note...the range in the fiscal note? Is that indicative of how many people, I guess, the fiscal note? [LB1082]

SENATOR CORNETT: What they did in regards to the fiscal note is they took everyone that's a state employee that is...might be witness to any criminal act, so say, for instance, you are a probation officer and you went into...like a at-home probation officer and there was a bag of marijuana in the person that's on probation's coffee table. That is a criminal act. They times that by two employees, because most times there are two employees involved with...in an incident. And they extrapolated that outwards. That's why we have the low range and the high range. And I have a breakdown of how they came to the fiscal note and, like I said, we are having a meeting this afternoon with the Policy Office in regards to trying to get... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: ...hard data, but we do know that overall the states that have enacted this, which are 30, in some form, and this being the most restrictive, that there is .2 percent of the workers' comp claims that are mental injuries. [LB1082]

SENATOR FULTON: Okay. Along those lines then there's a range, and I have some

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discomfort with how big the range is, this bill actually is going to apply for any employee, is that correct, any employee in Nebraska? [LB1082]

SENATOR CORNETT: Any...there's a division. First of all, let me state we are very uncomfortable with the range on the fiscal note and we've been working very hard and diligently on that and that is why we have this meeting set up. We've been requesting data from other states. I have no desire to pass something with a \$15 million price tag and I don't honestly believe it will be. What all employees comprises is... [LB1082]

PRESIDENT SHEEHY: Time, Senator. [LB1082]

SENATOR CORNETT: Sorry. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Thank you, Senator Cornett. Senator Lathrop, you're recognized. [LB1082]

SENATOR LATHROP: Thank you, Mr. President and colleagues. If I can, I'd like to visit a little bit more about work comp and mental or emotional injuries. When I spoke the first time, I suggested to you that in order to make a work comp claim, something about work had to be...cause you an injury, and we recognize in work comp law physical injuries. So if you bend over to pick up a box and you herniate a disk in your back, you're lifting a patient, that would be what we call a physical, physical injury. You have something you're doing physically that causes a physical injury. What has been missing from this discussion so far is recognition of the fact that work comp covers mental injuries right now. All right, we're not asking to cover mental injuries where they're not covered right now, and this is an important distinction if you're to understand the bill and what it tries to do. In Nebraska, as in elsewhere in the country, if you sustain a back injury, you sustain a brain injury, you sustain any kind of an injury and it leads to an emotional injury such as depression, posttraumatic stress disorder, that claim and the emotional component to that claim is compensable right now. So the distinction is, what has precipitated the emotional injury or the mental injury? If it is something physical, like a back injury, that leads to...or even if you get...even if you are hit in a...let's say that you're shot at in some kind of a robbery, for example, you get shot and you have emotional injuries covered under work comp. What this bill is attempting to address, for those people who are witness to or come upon violent criminal conduct, such as first responders, is this. If you have an emotional reaction to something you see or experience at work, but you haven't been physically harmed first, this will provide coverage. That is a very, very narrow group of people. The reason the fiscal note is subject to criticism is that it suggests that there will be a lot of people making claims under this new provision. It will be a very, very small number of people but it will be a very, very important group of people, and covering them is consistent with the purpose of work comp, which is twofold: to provide care to somebody hurt at work, and to get them back to work as soon as we can. Who will be covered and who won't be? It is not

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every time your feelings get hurt at work. It is not every time you get a demotion. Those are excluded. It is somebody who works at the Kwik Shop. At 2:00 in the morning someone comes in and puts a gun to their forehead and takes the boss's money out of the till. And when that person begins to shake, there is no physical injury, they begin to shake, they can't sleep, they begin to experience the symptoms of posttraumatic stress disorder; they need care. They need care if they are to return to function in our society. If they are to return to the workplace, they need care. By covering those people who have been witness to or first responders to violent criminal activity, we do important things and there is an important policy consideration here. We are providing care so these people can get better... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR LATHROP: ...and we are returning them to the workplace. If we do not provide the care, if we simply say go down to the clinic and get some care somewhere, they don't do it. They can't, because they have bills that are coming in. They can't take the time to heal. They haven't the resources to pay for it. There is another consideration when we talk about the fiscal note in this...on this bill and that is, to some extent, when we talk about the cities, the counties, those who employ the first responders, much of the work comp expense is medical, so we can pay it out of the medical insurance pocket or we can pay it out of the work comp pocket. It is better paid from work comp. It's offset by a savings in the health insurance, but it's better paid by work comp because their care comes quicker, it's provided without a deductible and copay, and without any limitation which you typically find with emotional injuries. That is a good policy reason. It is important that we provide for... [LB1082]

PRESIDENT SHEEHY: Time, Senator. [LB1082]

SENATOR LATHROP: ...our first responders. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Burling, followed by Senator Wallman, Senator Raikes, and Senator Lautenbaugh. Senator Burling, you are recognized. [LB1082]

SENATOR BURLING: Thank you, Mr. President and members of the body. Before I proceed, I'd like to ask Senator Lathrop a question. [LB1082]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to a question? [LB1082]

SENATOR LATHROP: Yes, I will. [LB1082]

SENATOR BURLING: Senator Lathrop, thank you. Some political subdivisions rely on volunteer first responders and they can have liability insurance on them and health

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insurance and life insurance and so on, but volunteers would not be covered under this, right, because they're not eligible for the Workers' Compensation Act. [LB1082]

SENATOR LATHROP: Senator Burling, I will tell you, from my own personal experience, I've not had occasion to represent a volunteer fireman. I'm remembering somewhere in Chapter 48, under the work comp statutes, that we have specifically provided for some coverage for volunteer firemen. I'd be happy to look up that...look that up and come back and share it with you off the mike, if you like. [LB1082]

SENATOR BURLING: Oh, thank you. My recollection is, because there's no salary, there's no basis for paying the premium and so I didn't think volunteers were covered under workers' comp. But thank you very much. I can only imagine the bottleneck that this bill would cause in our Workers' Compensation Court because it's so vague and too much gray area. Now that's not the fault of the promoters of this legislation. It's just the nature of the mental trauma arena. The sky can be the limit and I think the number of claims would be much greater than we would think. We often have come before us in the Revenue Committee bills to compensate volunteer first responders in this state for what they do. Nebraska relies very heavily on volunteer first responders. I don't know what we would do without them. And in Revenue Committee we always discuss this and we say, well, yeah, that's a good idea and we wish we could do that but we can't find the money. Seems to me that in this bill we're proposing to spend millions of dollars for injury to people who are paid to be first responders, but we don't seem to have the resources to give any compensation to volunteer first responders who may experience the same kind of mental trauma. And I want to note that on the fiscal note, whatever that might be, even though it might change, doesn't include the fiscal impact to governmental political subdivisions, of which I would assume would be very great. So I will be opposing LB1082. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Burling. Senator Wallman, you're recognized. [LB1082]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, stand in support of this. I have a relative who has posttraumatic syndrome from the military era and they're too proud, most of them, to ask for help. So that has nothing to do with this work, but it's still...we're going to see this from the Iraq War also, I think, coming up. And they're going to work some place and if something bad happens it's going to bring back bad memories. And some people it doesn't seem to bother, some it does. And I've been on accident scenes a couple times where people did...they were not alive. So, you know, you forget it, but stays in here. So, you know, they say this is a direct cost. We always seem to think healthcare is a direct cost. What's it cost if you're unemployed; if you're on welfare; if you have your family; if you beat up your kids? What's it cost there? You know, there's a cost savings. It's...mental health issues are not very well dealt with in this country today yet and probably never will be because it is subjective. It's hard to

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get a handle on this. And I think the cost is probably way too high, but I appreciate Abbie bringing...Senator Cornett bringing this forward and I urge you support these amendments and the bill. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Raikes, you are recognized. Senator Raikes. Senator Lautenbaugh, you are recognized. [LB1082]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. This is a tough bill to speak on and it's one of those issues when you break it down with people involved, it's hard to be hardhearted, I guess. You don't want to appear to be hardhearted. This is a dramatic expansion, I believe, in what is traditionally a compensable injury. And I have filed an amendment on this that would at least narrow it to first responders, and not other witnesses in the course and scope of their employment, and I'll speak more on that when the time comes. But that at least creates a definable group of people. And I wonder, Senator Cornett, would you yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR LAUTENBAUGH: Senator, as the bill...as the amendment now stands and now reads, this does include people who, in the course and scope of their employment, witness a violent criminal act and suffer mental harm as a result. Is that correct? [LB1082]

SENATOR CORNETT: Correct. [LB1082]

SENATOR LAUTENBAUGH: Now if I'm reading this correctly, that would include a delivery man who happens upon the scene of a crime and witnesses it and suffers a mental injury as a result, as long as he's within the course and scope of his employment. Is that correct? [LB1082]

SENATOR CORNETT: Yes. [LB1082]

SENATOR LAUTENBAUGH: That kind of touches on the problem I have with this, that that could be a huge population of people, depending on what the criminal act is. And one example, and this is not in the original thought of mine and I apologize if someone else pointed it out, 9-11 was a criminal act and everyone who witnessed that from their offices would probably, under our law, be under course and scope of...in the course and scope of their employment at the time. That's a huge population of potential claimants. And really, that is what my amendment gets to, is that at least with limiting this to first responders--and people have problems with that and we're going to hear a lot about

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that, I'm sure--at least that provides a definable population that we can look at here. You want to follow up, Senator Cornett, so I would ask would you agree with that? [LB1082]

SENATOR CORNETT: No. It does give us a definable group of people, but when you use 9-11 as an example, first of all, New York already has this in place. And as I stated earlier, the qualifying events that lead to being able to claim this are the most strict in the country. If you read it, you have to be a victim or a witness to a violent criminal act by preponderance of the evidence in a court. Again, looking across the country and looking at the number of claim...work comp claims filed under what's called mental/mental injuries, they are only 2 percent, .2 percent of all worker comp claims for the states that have enacted this, and 30 states have in some form or another, depending on if they're less stringent in their bar for being able to apply or have better benefits or worse benefits. Thirty other states have done this. [LB1082]

SENATOR LAUTENBAUGH: Now do you know how long of a history we have working with this? And I don't mean to put you on the spot. That's basically asking... [LB1082]

SENATOR CORNETT: That one I do not know. I know that there is a great variance between states on when this legislation was enacted or this type of legislation was enacted. [LB1082]

SENATOR LAUTENBAUGH: Now is that claims made or claims paid on? [LB1082]

SENATOR CORNETT: I'm just going to read you the data. Now this is for self-insured, so this does not include...or this is for private insurance. This does not include self-insureds, and that is the data that we are waiting on currently, but the percentage should not be any different between self-insured. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: But we analyzed the data on mental/mental injuries from states that have laws with similar language as proposed in this bill, and particularly we examined states that included wording as "unexpected, unforeseen, extraordinary or unusual in comparison with normal working conditions." These states are Arkansas, Maine, Missouri, Nevada, New York, Utah. This is just some of the states. They show that approximately .2 percent of all claims are mental/mental variety, and that includes New York. [LB1082]

SENATOR LAUTENBAUGH: Thank you, Senator Cornett. I think this comes down to a lot. We are comparing other states and I'm not 100 percent convinced that we are comparing apples to apples when we compare other state systems to ours across the board. Once again, I do have an amendment pending, and I'll speak more about that when the time comes, that does just limit this to first responders just because they are

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an identifiable population, at least, as defined in the statute. [LB1082]

PRESIDENT SHEEHY: Time, Senator. [LB1082]

SENATOR LAUTENBAUGH: Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Cornett, followed by Senator Hudkins, Senator Fulton, and Senator Howard. Senator Cornett, you're recognized. [LB1082]

SENATOR CORNETT: I want the body to stop and think what their objections are. We're hearing objections to a cost. We don't have a definite cost. If you look at the range, it's between \$1 million and \$15 million. I urge the body to support this amendment and the bill between General and Select so we can get a definite or a more defined fiscal note. But regardless if the cost is \$1 million or \$15 million, what is the cost if we don't do something? How many emergency service personnel have to seek psychiatric help on their private insurance? How many people need help? Do we sit here and debate, as Senator Chambers did earlier, food stamps for hungry children? These are people that need help. We are talking about approximately .2 percent of all claims filed. I feel the body needs to think about what the right thing is, and I am as guilty as everyone else in here of listening to the lobby. The lobby is talking about what it might cost them. They're not talking about the fact what the offset is. If their work comp premium goes up, how much is their private pay premium going to go down for the people that are filing on their private pay insurance? There is the cost to society. There is cost to the private pay. Yes, I'm not standing here and saying that there will not be an increase in work comp premiums. I'd be foolish to do that. I'd be lying to you. I am saying that we need to keep our eye on the ball, that being we need to help our first responders who are there for us, and we need to be there for our citizens that have suffered a mental injury. Under our state law, and I probably was not clear enough in the opening, if you are a police officer and you go into a scene and you trip and you break your leg, you are covered under workers' compensation for treatment, for rehabilitation so you can return to your job. If you get into a fight as a police officer and get punched in the face or get hurt or get shot and you have posttraumatic stress from that injury, you are compensated under workmen's compensation for both your physical injury and your mental injury. The only thing we are looking at including is if, under first responders, if you have some extraordinary qualifying event, significant, and you need to go see a counselor or a psychiatrist and you have met the standards under this bill, which again are the most restrictive in the country, you can go seek help. If you are an employee, and I...this bill was not based on Von Maur. Von Maur happened after we had started work on this bill, but it is a perfect example. If you are an employee at Von Maur and you witness your coworker or your customer executed in front of you, and you want to go see a therapist or a counselor, if you work part-time at a business you are not eligible for health insurance benefits. You are not eligible to go see a psychiatrist in

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the state of Nebraska. [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: You have to pay for that out of pocket. Now Von Maur is a good corporate citizen and has stepped up to help its employees, but we can't guarantee that all businesses would do the same thing. We need to look at what is the greater good here. And I promise the body that we will work on getting you a more accurate fiscal note between now and Select File. Thank you very much. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Fulton, you are recognized. [LB1082]

SENATOR FULTON: Thank you, Mr. President. And thanks, Senator Cornett, too. I thank her for bringing this, some more clarification to the bill and what exists presently in statute. The concern that I have, though, is not just with the first responders. It's the first part of this amendment. Says that it's line 4, "mental illness unaccompanied by physical injury for an employee who, in the scope and course of his or her employment, is a victim of or witness to a violent criminal act," then in line 6, "and for an employee who is a first responder if the employee," and then there are subsections. So I...would Senator Cornett yield to a question? [LB1082]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1082]

SENATOR CORNETT: You are not speaking to AM2550. You're speaking to the committee amendment, correct? [LB1082]

SENATOR FULTON: Yeah, I'm sorry. I'm on AM2252. [LB1082]

SENATOR CORNETT: Okay. And just, again, I urge that we need AM2550 passed because it brings the committee amendment in state statute. Go ahead. [LB1082]

SENATOR FULTON: Yeah, and I can understand AM2550 and I'll support AM2550. That's clarifying and I'm fine with that. But we're amending it to AM2252. [LB1082]

SENATOR CORNETT: Correct. [LB1082]

SENATOR FULTON: The line 6... [LB1082]

SENATOR CORNETT: Uh-huh. [LB1082]

SENATOR FULTON: ...of AM2252, there's that conjunctive "and," so there are two matters, I guess, for lack of a better term, taken up in this bill. [LB1082]

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SENATOR CORNETT: Correct. [LB1082]

SENATOR FULTON: One would be an employee who is a first responder, which we are clarifying with AM2550. [LB1082]

SENATOR CORNETT: Correct. [LB1082]

SENATOR FULTON: The second part that I can see in this bill that is effectual, and this is really what's causing my concern, "an employee who, in the scope and course of his or her employment, is a victim of or witness to a violent criminal act," that's not just first responders. That's any employee. And am I correct in saying that's any employee in the state of Nebraska? [LB1082]

SENATOR CORNETT: Correct. That is what Senator Lautenbaugh's question was. [LB1082]

SENATOR FULTON: Okay. Would...so "violent criminal act," I guess the court case that brought this forward, I'm not familiar with the court case. I just...I know that it's the Zach court case. Would that...if we were to pass this law, would that have allowed that court case to have a different outcome? [LB1082]

SENATOR CORNETT: That was not a private employee. That was a State Patrol officer that had involvement with the Norfolk bank shootings. He committed suicide after the shootings because he felt responsibility for the... [LB1082]

SENATOR FULTON: Okay. [LB1082]

SENATOR CORNETT: ...for the action. So you can't compare that. That's apples to oranges. [LB1082]

SENATOR FULTON: Yeah, understood. Yeah, I wasn't familiar with the case, so I understand that. I guess, Senator, the concern that I have is that this is opening it up to all employees in the state of Nebraska, and if we don't have a good handle on what the fiscal impact is for just the government--and I understand that you may disagree with that, you may believe that we do have a better handle--but I'm looking at that fiscal note and saying if we have that type of discrepancy for employees of the state of Nebraska, when we open this up to all employees, anyone who could witness or potentially witness a violent criminal act or experience a violent criminal act, it's wide open. I have grave concerns with that. I'm going to go ahead and yield my time, Senator, to you. [LB1082]

SENATOR CORNETT: Thank you, Senator Fulton. [LB1082]

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PRESIDENT SHEEHY: Senator Cornett, 1 minute, 30 seconds. [LB1082]

SENATOR CORNETT: Thank you, Senator Fulton. The private employee is the person we have data on. That is the .2 percent that is private insurance. The data that we are trying to get is for the self-insureds: the state of Nebraska, the city of Omaha, self-insured entities. For private pay,... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR CORNETT: ...with the limiting language that we have in here, the data from around the country from other states that have enacted this is .2 percent. NCCI is the National Council on Compensation Insurance Incorporated, and again I will repeat, we analyze the data on mental/mental injuries from states that have laws with similar language as proposed in this bill. In particular, we examined states that include wording such as "unexpected, unforeseen, extraordinary or unusual," and we with this amendment, committee amendment, have raised that bar even higher, "in comparison to normal working conditions." These states, and these are not all of the states, there are 30 that have enacted some form of this legislation, are: Arkansas, Maine, Missouri, Nevada, New York, Utah. These states show... [LB1082]

PRESIDENT SHEEHY: Time, Senator. [LB1082]

SENATOR CORNETT: ...for private pay... [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. (Visitors introduced.) We have Senator Howard, followed by Senator Lathrop. Senator Howard. [LB1082]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of Senator Cornett. It's time that we come to terms with the damage that is caused to individuals when they come face to face with horrific events. I'm familiar with situations that workers in the social services face, sometimes on a daily basis. Social workers are trained to be professionals and to give their assistance under the worst of conditions. When the stress would become too unbearable, the term most frequently used was that worker is a burnout. This bill addresses the needs of our first offenders (sic) who have been subjected, again, to the worst of the worst, and it's time to admit that humans, no matter what their professional ability, can be pushed beyond what can be expected to be normally handled. If we can protect cats and dogs and this year horses from cruelty, surely we can do the same for those who put themselves on the scene to protect all of us. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Lathrop. [LB1082]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'd like to maybe

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respond to some of the concerns that I've heard this morning with the questions, and maybe respond to the idea that we are going to flood the work comp court, that we'll have endless litigation and that we will have tons of claims if this bill passes. And you know it's been that, historically, the difficulty, as the law has addressed mental injuries, is the very same concern: we're opening the door; we don't know where this is going; we'll have a jillion claims. I've been doing...practicing law for 27 years, and I got to tell you in 27 years I've only had one person talk to me about this kind of an injury and it was Mark Zach's family. I represented Mark Zach's family and I can only tell you that after doing that I have an appreciation for the stress that we put police and firefighters in, in their job. They have, because we send them into the burning buildings, because we have them respond to calls in the middle of the night, in the dark, in the alleys, they're the people that do the stuff that none of us can do. None of us want to go down a dark alley and respond to somebody that's looking in windows or maybe going through somebody's car, but these people do. And none of us want to go into a burning building, but these people do. And they're the people that respond to those accidents on the interstate when you know, when you drive by and the car is mashed, you know somebody in there is mangled, and they're the people that respond to that. They are the folks who take the bodies out of the cars, who take the bodies out of the houses, who respond and walk in the door on a domestic violence call and find somebody's throat slit. And today you have an opportunity to say we honor that work. Most of the time they will not need care, they're professionals, but some of the time they will. Some of the time they will and some of the time they may need time off from work, and that's what we're talking about today. And to stand up and say we're going to clog the courts, we'll have endless litigation, we don't know what the fiscal note is, we're missing the point. These are the people that we train to respond to the 9-11s. They're the people that answer the call when we call 911 and they see and experience the most horrific things, things that the mind can't wrap themselves around, things no person can comprehend, and things that cause injury to the psyche. We need to expand the workers' comp statute in a very, very small way, in terms of the number of claims, but in a very measurable way to the people we rely on, the people we count on, to be there when we call 911. I would encourage you to consider the people that we will cover with this. It is not a gross or a massive expansion of work comp. We will also provide for the store clerk who has a gun put to her forehead in the middle of the night working at the 7-Eleven, and what's wrong with that? Do you think it's anybody that sees a crime that's going to make a claim now? No. If you read the bill, it is only going to be the person who had the gun put to their head, who saw their coworker shot in the carrel next to them and they can't go to the workplace any longer. These people need care, they need our help, and that's what the work comp law was designed to do. This is a modest expansion to take care of a necessary need... [LB1082]

PRESIDENT SHEEHY: One minute. [LB1082]

SENATOR LATHROP: ...and I would encourage your support of LB1082. Thank you.

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[LB1082]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Are there other members requesting to speak on AM2550? Seeing none, Senator Cornett, you're recognized to close. [LB1082]

SENATOR CORNETT: Thank you very much. I urge the body to support AM2550 to the Business and Labor Committee amendment. It is clarifying language that brings the amendment inside state...what's currently in state statute in regards to the definition of first responder. Thank you. [LB1082]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing of AM2550, amendment to committee amendment, AM2252. All those in favor vote...the question before the body is on the adoption of AM2550. All those in favor vote yea; opposed, nay. Senator Cornett. [LB1082]

SENATOR CORNETT: I request a call of the house, please. [LB1082]

PRESIDENT SHEEHY: There has been a request for the 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. [LB1082]

ASSISTANT CLERK: 26 ayes, 0 nays to go under call, Mr. President. [LB1082]

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 Ashford, would you check in? Senator Schimek, Senator Hansen, Senator Wallman, Senator Lautenbaugh, Senator McDonald, the house is under call. Senator Cornett, when all members are present, how would you like to proceed? Call-ins or roll call? [LB1082]

SENATOR CORNETT: Roll call, please. [LB1082]

PRESIDENT SHEEHY: Senator Cornett, all members are present. Senator Cornett has requested a roll call. The question before the body is on the adoption of AM2550 to AM2252. Mr. Clerk. [LB1082]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1115-1116.) Vote is 25 ayes, 0 nays, Mr. President. [LB1082]

PRESIDENT SHEEHY: AM2550 is adopted. The call is raised. Mr. Clerk, do you have items for the record? [LB1082]

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ASSISTANT CLERK: Mr. President, I do. Interim study resolutions: LR299 by Senator Pankonin, and LR300 by Senator Janssen. Have an amendment to be printed to LB1068 from Senator Kruse; a motion relative to LB1092 from Senator Harms; and amendment to LB1082 from Senator Lautenbaugh. (Legislative Journal pages 1116-1118.) [LR299 LR300 LB1068 LB1092 LB1082]

Mr. President, I do have a priority motion. Senator Flood would move to recess until 1:30.

PRESIDENT SHEEHY: You have heard the motion to recess until 1:30. All those in favor say aye. Opposed, nay. We are at recess.

RECESS

SENATOR LANGEMEIER PRESIDING

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

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any items for the record?

ASSISTANT CLERK: Not at this time.

SENATOR LANGEMEIER: Thank you. We'll now proceed to the first item on this afternoon's agenda, and pursuant to the agenda, at 1:30 we switch over to General File, 2008 Speaker priority bills, LB907. Senator Pirsch, you are recognized to open. Oh, excuse me. Mr. Clerk, LB907. [LB907]

ASSISTANT CLERK: Mr. President, LB907 was introduced by Senator Pirsch. (Read title.) Bill was read for the first time on January 14, referred to the Banking Committee, placed on General File with no committee amendments. [LB907]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Now, Senator Pirsch, you are recognized to open on LB907. [LB907]

SENATOR PIRSCH: Thank you, Mr. President. Members of the body, this bill was brought to me by the Secretary of State. It passed 8 to 0 on a vote at committee, unanimously. The bill has no opponents or no neutral testifiers, supported also by the

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Nebraska State Bar Association. It has no fiscal impact. I characterize it simply as an important bill but one that's a cleanup measure. It does function by eliminating old outdated, outmoded language in statute, and in two ways makes the Secretary of State's treatment of LLCs uniform with other business entities, such as corporations, LLPs, nonprofit associations, and the limited cooperatives. Three points about this bill. First, two of those points, the way the bill functions to make LLCs uniform with other business entities; one point of the bill works to eliminate outdated language. It doesn't, again I'd like to point out, change anything as far as fees collected or where fees are allocated. First, to take the last point first, I'd like to talk about the way it functions to eliminate obsolete, outdated, irrelevant language that exists currently in statute. The language that is obsolete is contained in statutes that deal with what types of corporate names are allowed to be selected by people incorporating businesses. We used one standard in the state of Nebraska from 1995 through 2003, and then the Legislature in 2003 made the conscience decision and voted to change it back to the old standard, the way it was done before 1995. It really doesn't matter for the purpose of today what those standards were. I'm not seeking to change those standards. If you're really interested, it went from (laugh)...it went from the "shall be distinguishable upon the records of the Secretary of State standard," which was used through 2003, back to the "shall not be the same as or deceptively similar to" upon the records of the Secretary of State standard that exist today now. The bill doesn't seek to change any of these standards. The bill just says that since in 2003 the Legislature changed back to the old standard, let's delete the obsolete language that came about as a result of that language that was used from '95 to 2003. The next two parts of the bill, as I indicated earlier, simply ensure uniformity of treatment between LLCs and every other form of business entity. I'd first like to talk about the area of uniformity as it relates to administrative dissolution reinstatement. From time to time, people who organize LLCs decide not to continue paying their fees with the Secretary of State if, say for instance, the business, the LLC, isn't doing particularly well. If that organizer of the LLC then eventually later decides to pay off all his past fees and to reinstate, that is to say get back into the business with his LLC, then this bill would allow that person to do so at any point in time to...once he repays his...he or she repays his fees, just like a person who engages in a corporate business and other business entities can do currently. So that makes it uniform. And secondly, when it...the third point, actually, of the bill also deals with uniformity between LLCs and all other forms of business entities. It deals with situations where business names are created that are deceptively similar to other existing businesses' names. If an LLC organizer knows that he wants to create an LLC, for instance, called ABC Electric Services, but he knows that there's a company that already exists that's been using the name ABC Electric Company, that LLC organizer cannot use the name legally at all, period. Now if he wasn't an LLC but rather was...formed a corporation or some other business entity that wasn't an LLC, he would be allowed by law to approach the other business, the one in this instance ABC Electric Company, and ask them permission to use that similar name. And in those instances, with a corporation or a nonprofit, etcetera, if the other company that is using the name

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currently consents, then that corporation or nonprofit, etcetera, can use the name. And so that goes for everyone except for LLCs currently. And so this bill would simply have all business entities using the same rule. I don't think there's any argument or logic why they would not be using that same rule. I think the current state of "disuniformity" was not a conscious decision made by a Legislature at any point in time; just an aftereffect of piecemeal legislation being enacted over the years, from year to year, without a concern for ensuring that uniformity exists as they added legislation. So I think this is very much just a cleanup measure and very little in substance, but very important in new substance, that is to say. Again, I think, again, there's no...there was no opposition at the committee, a 8 to 0 unanimous vote, no fiscal impact. I urge you to vote yes on the measure. Thank you. [LB907]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. You have heard the opening on LB907. The floor is now open for discussion. Senator Chambers, you're recognized. [LB907]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I and others were at the Exec Board having a hearing and some of the other senators have been at other committees. I'm aware of that because at the same time I was to be at the Exec Board, the Business and Labor Committee was meeting, and there were other committees meeting and some of the members of the Exec Board are members of those committees too. So this afternoon, you're not being boycotted, although it doesn't look like anything very exciting is on the agenda, but who knows what might develop as we proceed? I'd like to ask Senator Pirsch just a question or two in order that I can be made aware of what we're talking about. Senator Pirsch, I know you probably have explained the bill but, in a nutshell, what is it going to do? [LB907]

SENATOR LANGEMEIER: Senator Pirsch, would you yield? [LB907]

SENATOR PIRSCH: Yes, I will. [LB907]

SENATOR CHAMBERS: In a nutshell, what is the bill going to do? [LB907]

SENATOR PIRSCH: I appreciate that. Three points, and I'll kind of make those a little more succinct: eliminate...we had one standard in place via statute that directed the Secretary of State through 2003. Well, we changed the standard in 2003 but we didn't eliminate the outmoded, outdated language from that prior statute. This bill eliminates that, the vestiges of the really obsolete language. Secondly, two other points: in the second and third point they deal with uniformity between LLCs in every other business entity, putting everything on the same level playing field. Right now when it comes to the area of administrative dissolution reinstatement, say the fact scenario, I wanted to start a business, incorporate or organized as an LLC, organization I use instead of incorporation, it's a term of lawyer art, I organize an LLC, I decide that things aren't

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going well, I don't pay my fees to the Secretary of State to keep the name, but then four years passes and strikes me, you know what, I should get back into the business; no one is using the name that I had before, I'd just like to go back into that. Well, it allows for...right now, if I was a corporation or nonprofit or any other type of business entity other than LLCs, I could do that. But right now, with LLCs, I can't, and so this allows the LLCs to do that. Thirdly, another measure and the third point and last point that deals also with uniformity of LLCs deals with the area of similar...of the name of an LLC in cases where they are deceptively similar. Say you have a company that you want to start...you want to start an LLC that is ABC Electric Services but you know that I have a company called ABC Electric Company. You come over to me and say, is it okay with you, Pete, if I start a company that's kind of close to your name? I say, look, I have no problem with that; you're not even close to me. It's not enough to have me consent to that. The state steps in and says you can't do that. Now if you're a corporation and did that to me, I could consent and you'd be fine. Then you could use the name ABC Electric Services. And so what this bill would do, put everyone on the same playing field, say if the other company consents it shouldn't matter that. You know, there's no distinguishing, unique, peculiar feature about an LLC that would distinguish it from having the same rights as a corporation or any other type of business entity. And so it would allow me, if I was to say...if you were an LLC and came to me, then I would be able to grant you that permission to use a similar name. Now you couldn't use the same name. The state steps in with everyone--corporations, etcetera. If you were ABC Electric Services and I was ABC Electric Services, the state says that's not allowable, but they do allow for deceptively similar names. [LB907]

SENATOR LANGEMEIER: One minute. [LB907]

SENATOR PIRSCH: So I don't know if that helps, but that's kind of a nutshell of how the bill functions. [LB907]

SENATOR CHAMBERS: You made it clear. Thank you, Senator Pirsch. [LB907]

SENATOR PIRSCH: Sure. [LB907]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Chambers, you are recognized. [LB907]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, as Senator Pirsch was speaking, I thought of something. Some people may not have heard of the Marx Brothers. There were four of them: Groucho, Harpo, Zeppo, and I never tell people the fourth one. Does anybody know the fourth Marx brother? Senator Aguilar, I'd like to ask you a question. [LB907]

SENATOR LANGEMEIER: Senator Aguilar, will you yield? [LB907]

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SENATOR AGUILAR: I'd be happy to. [LB907]

SENATOR CHAMBERS: Senator Aguilar, I don't want you to gum up the works. Now what's the name of the fourth Marx brother? [LB907]

SENATOR AGUILAR: I believe it was Chico. [LB907]

SENATOR CHAMBERS: I'd like to ask Senator Wightman a question. [LB907]

SENATOR LANGEMEIER: Senator Wightman, would you yield? [LB907]

SENATOR WIGHTMAN: Yes. [LB907]

SENATOR CHAMBERS: Senator Wightman, do you have an idea of the name of the fourth Marx brother? [LB907]

SENATOR WIGHTMAN: I do not. As a matter of fact, when you got to Zeppo, you got one beyond me. [LB907]

SENATOR CHAMBERS: Oh, thank you. [LB907]

SENATOR WIGHTMAN: (Inaudible) Harpo and Groucho. [LB907]

SENATOR CHAMBERS: Okay. Thank you very much. I wonder if there's anybody...I'd like to ask Senator Pankonin a question. [LB907]

SENATOR LANGEMEIER: Senator Pankonin, would you yield? [LB907]

SENATOR PANKONIN: Yes, I will. [LB907]

SENATOR CHAMBERS: Senator Pankonin, do you have an idea of who the fourth Marx brother might be? [LB907]

SENATOR PANKONIN: Senator, only if I can use the counsel from the Banking Committee who... [LB907]

SENATOR CHAMBERS: Yes, you may. You're entitled to use your sources. [LB907]

SENATOR PANKONIN: All right. Gummo is who the counsel says. [LB907]

SENATOR CHAMBERS: Bingo. [LB907]

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SENATOR PANKONIN: Ah, okay. [LB907]

SENATOR CHAMBERS: It's Gummo, not Bingo. Then I was told there are five. I'd like to ask Senator Rogert a question. [LB907]

SENATOR LANGEMEIER: Senator Rogert, would you yield? [LB907]

SENATOR CHAMBERS: Senator Rogert, how many Marx brothers are there that you're aware of? [LB907]

SENATOR ROGERT: There are five, so Senator Aguilar was correct. [LB907]

SENATOR CHAMBERS: In saying Chico. [LB907]

SENATOR ROGERT: Yes. [LB907]

SENATOR CHAMBERS: So we have Harpo, Groucho, Zeppo, Gummo, and Chico. [LB907]

SENATOR ROGERT: Yes. [LB907]

SENATOR CHAMBERS: What about Karl? [LB907]

SENATOR ROGERT: I don't have a record of... [LB907]

SENATOR CHAMBERS: Karl Marx. [LB907]

SENATOR ROGERT: Karl Marx. (Laugh) [LB907]

SENATOR CHAMBERS: Thank you. But here's what Senator Pirsch made me think of, and this really happened. The Marx Brothers were going to put together a movie called "Casablanca." Warner Brothers had already put out such a movie and they were not going to allow the Marx Brothers to use that name on their movie, and the Marx Brothers argued, or their counsel, that this is the name of a city and you cannot have exclusive rights to a city. So Warner Brothers said, then we'll go to court on it. The Marx Brothers did not want to do that so they said, here's what we're going to do then; we're known as the Marx Brothers, you're known as Warner Brothers; we were known as the Marx Brothers before you're known as Warner Brothers, and we're going to go to court to make you stop using the term "Brothers" in your name. And believe it not, that resolved the whole issue. It did not become a lawsuit and the only way you'll be aware of it is when you're in the presence of somebody like me who has all these bits of useless, unnecessary, but sometimes interesting and engaging bits of miscellany. Thank you, Mr. President. [LB907]

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SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on, Senator Pirsch, you are recognized to close on LB907. [LB907]

SENATOR PIRSCH: Well, thank you, Mr. President, members of the body. For a minute there I was worried that Senator Chambers was going to say that I reminded him of one of the Marx Brothers, (laugh) so that was refreshing. Well, I tell you, I would again just remind it doesn't have any fiscal impact and was unanimously voted out of committee. I'd urge you to vote green on the measure. Thank you. [LB907]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. You have heard the closing on LB907. The question before the body is, shall LB907 advance? 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. [LB907]

ASSISTANT CLERK: 25 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB907]

SENATOR LANGEMEIER: LB907 does advance. Mr. Clerk, next item on the agenda, LB786. [LB907 LB786]

ASSISTANT CLERK: Mr. President, LB786 was legislation introduced by Senator Howard. (Read title.) The bill was first read on January 9, referred to the Transportation Committee, that committee places the bill on General File with committee amendments. (AM2084, Legislative Journal page 728.) [LB786]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Howard, you are recognized to open on LB786. [LB786]

SENATOR HOWARD: Thank you, Mr. Speaker and members of the body. Today I bring LB786, the move over bill, for your support. First, I'd like to thank Speaker Flood for designating this as a Speaker's priority bill. I'd also like to recognize Senator Erdman, who has worked on this issue in the past and continues to be supportive. The purpose for this bill is simple. I want to prevent injury and possibly death among individuals who serve others on our state's roadways. LB786 would require motorists on Nebraska's controlled-access highways with at least two available lanes traveling the same direction, and I'll repeat that because it's important, two available lanes traveling in the same direction to yield the right of way to a stopped, authorized, emergency or roadside assistance vehicle. The authorized vehicle must be using proper audible and visual signals. Motorists would be required to move into a lane at least one lane apart from the stopped vehicle, unless otherwise directed by peace officer or other authorized personnel. If moving to another lane is not possible due to weather or road conditions, the approaching driver shall maintain a safe speed and proceed with caution. If the

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controlled-access highway does not have two available lanes traveling in the same direction, the approaching driver shall maintain a safe speed and proceed with caution. The violators of this section will be guilty of a traffic infraction for the first offense and a Class IIIA misdemeanor for second and subsequent offenses. Let me be clear, however, this bill is not intended to be a revenue generator for law enforcement. The purpose of the law is to heighten awareness about the importance of yielding to emergency and roadside assistance workers in order to increase public safety. Nebraska is one of only ten states that do not have a move over law. All of the states adjoining Nebraska have move over laws. Reports from these other states are telling us that move over laws improve public safety. During the hearing for this bill we heard from emergency service personnel and motorists about how frequently they have had near-miss experiences on the side of the road. We heard about tow trucks and assistance vehicles, and equipment being destroyed in collisions. The proponents who spoke from personal experience were passionate about the need for Nebraska to do something to address this concern. If you don't understand the need for this bill, and I'm quoting one gentleman, then you need to go out there and stand with your toes on that line while the traffic whips past you at 75 miles per hour or more, and then he added, it will draw your shorts up. There have been concerns raised about the ability to enforce the provisions of the bill. I acknowledge that in some situations enforcement may be difficult. However, AAA, who is supporting the bill, has received numerous calls from drivers who have violated these laws in other states, inquiring about what recourse they might have. Ideally, what we would like is to not have concerns about enforcement because people follow the law. Some have argued that moving over is a common-sense driving strategy that all people should know and apply, but it can only be common sense if everybody knows it. Many people are not aware that they should move over to yield the right of way to emergency and roadside assistance vehicles. Many motorists have never been stopped on the side of the road and don't realize the potential for danger. I don't believe the drivers are intentionally inconsiderate; they just aren't aware. There is no information contained in our driver's manual regarding move over because it's not a law. We are no longer providing driver's education in schools where these type of defensive or driver safety strategies are taught, so how can we assume that people will know they need to move over if we don't inform them. This is a simple bill that improves driver awareness and public safety. It has the potential to decrease unnecessary danger for those who risk their lives to help others every day and I ask for your support of LB786. Thank you. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Howard. As the Clerk has stated, there are committee amendments offered by Transportation, Telecommunications Committee. Senator Fischer, as Chair of that committee, you are recognized to open on the committee amendments, AM2084. [LB786]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM2084, strikes Section 2(2), which requires the Department of Roads to

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post and maintain signs along controlled-access highways giving notice of our move over law. The committee felt that the signs were unnecessary and education of the law could be better provided by the Department of Motor Vehicles through their driver education programs and driver's license testing system. Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the opening on the committee amendments. The floor is now open for discussion. Those wishing to speak, we have Senator Kruse, and Senator Chambers. Senator Kruse, you're recognized. [LB786]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment and strongly in support of the bill. I considered bringing this bill two years ago when persons who work on motorist assist in the state contacted me and said it gets a little scary out there on the side of the road, and speaking in particular of I-80. So I checked in to see what it would take to do that bill and right away was discouraged from it by certain persons in authority because they said, oh, my goodness, there's sometimes when you couldn't move over. Well, yes, that's true, if it's heavy traffic, and there's a variety of things, but you could still give that person that break, a literal brake, on the side of the road without jeopardizing yourself if you just kind of slowed down, got everybody to pay attention to that. It makes common sense. It's common courtesy. I have been there driving home from this place in a driving rainstorm with a flat tire, a blowout, on the side of the road. You know, that's not fun. It builds character. There are semis going by at 75 and the wind is whipping and the rain is whipping and you're trying to figure out how am I going to get out of here in a safe manner, when you've pulled off the road as far as you can in a rain without ending up being stuck out in some grass. It's just a dangerous situation and if persons would slow down it would do a lot. I think the best effect of it is long term because it will get into driver's manuals and, as Senator Fischer indicated, into driver education courses and so on until those who haven't thought about it, who haven't been caught on the side of the road in a driving rain, will give them a chance to consider that common courtesy and find it even more important that it be an accepted rule of the road. I thank you. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Chambers, you're recognized. [LB786]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is feel-good legislation. I'm not condemning Senator Howard. If you adopt this committee amendment, it is not even well drafted criminal legislation. You are criminalizing conduct. A person must be given notice of criminal conduct. If you are driving on the interstate, you see a speed limit sign, that notifies you of what you've got to do or you are guilty of a punishable offense. If they have some of those areas where you can cross from one lane...one direction of highways to the other, they'll have a sign with a

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line drawn through it showing you can't go across. You are notified. I was the one who required, by way of an amendment, that there be posted on the highway near work sites that fines are doubled if you violate the speed limit in those areas. Why don't we want the public notified? You're going to put the word out there that you've got to pull over, but you're not going to be told that if there are not two additional lanes going in the same direction you're not required to pull over. All you're told is you've got to pull over. There should be the requirement of these signs and they should be posted at every point where you're going to have three lanes of traffic going in the same direction, and those signs should be required. And if those signs are not there, with all due respect to the Speaker--he and I talk about things--I'll keep us here the rest of the session on this bill. You all may think it's trifling. I'm not in favor of giving cops that kind of discretion. They can say, well, you didn't pull over, and I say, well, I didn't know I was supposed to pull over. And the cop may not know that I'm supposed to pull over only if there are at least two additional lanes going in the same direction. If there are not two additional lanes, I've got to slow down to a reasonable speed and drive with due care and due caution. And who makes that determination? A cop. There are cops who stop people if their tire touches the center line, and there are cases in court where that happened and the court said, well, yeah, that gave the officer probable cause to stop you because you're not supposed to drive on the line and you acknowledged your tire may have touched the line. That is insane! And when you have officers with no better judgment than that, something has to be done in the law to prevent these people without common sense from making a mockery of the law and creating a very negative attitude in the minds of the public behind something like this. Now that I've made those general comments, and I'm going to talk a lot on this bill, I'd like to ask Senator Howard a question or two, even though we're on the committee amendment, because the committee amendment is easily understood. [LB786]

SENATOR LANGEMEIER: Senator Howard, would you yield? [LB786]

SENATOR HOWARD: Yes. Yes, I would. [LB786]

SENATOR CHAMBERS: Senator Howard, on page 2, in line 8 of the green copy, reference is made to "road assistance vehicle." What is a road assistance vehicle? [LB786]

SENATOR HOWARD: Let me find this so I'm following with you. Page 2? [LB786]

SENATOR CHAMBERS: Oh, I'll wait. Page 2, line 8, and that term appears elsewhere, but I want to deal with it the first place it appears in the bill. What is a road assistance vehicle? [LB786]

SENATOR HOWARD: That refers to a tow truck. [LB786]

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SENATOR CHAMBERS: How do we know that? [LB786]

SENATOR HOWARD: Well, that was a definition given to me by Bill Drafters. [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR CHAMBERS: Where is the definition, because I don't know? Is it someplace else in the statute, in another statute that would be cross-referred? [LB786]

SENATOR HOWARD: I'm sorry. I'm sorry. [LB786]

SENATOR CHAMBERS: I don't know. Would it be...would that term be defined in another statute that is mentioned in the bill? [LB786]

SENATOR HOWARD: The way that I know this is referring to a tow truck is because when I asked for the bill to be drafted, that's the term that I included and they translated that into an emergency assistance vehicle. [LB786]

SENATOR CHAMBERS: So is there a definition of road assistance vehicle in the statute? [LB786]

SENATOR HOWARD: In this particular statute defined? [LB786]

SENATOR CHAMBERS: Yes, or a statute that might be cross-referred? [LB786]

SENATOR HOWARD: I couldn't answer that. [LB786]

SENATOR CHAMBERS: All right. Let me ask you a question on page...about something on page 3. [LB786]

SENATOR LANGEMEIER: Time. [LB786]

SENATOR CHAMBERS: Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Stuthman, you're recognized. [LB786]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. As Senator Chambers stated, this is another one of those feel-good legislative bills. As you may have noticed on the committee statement, I did oppose moving this out to the...to General File. I think this is something that, in my opinion, that we're trying to do, trying to put legislation into place where just a little bit common sense should prevail. If you see someone that's along the side of the highway that is in distress, you should move over

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into the other lane if at all possible. And this deals only with the roads that are going with two lanes in the same direction, like on the interstates or the expressways. Another thing that I think is going to be very hard is to how are you going to police this if someone doesn't move over and you get the license plate number, which is, in my opinion, almost impossible. When you're standing along side the road and you almost get blown off and someone doesn't move over, you're not going to be able to get the license plate because they're going at a fairly high rate of speed. They should slow down. They should move over. The only time a law enforcement officer will be able to see who it is, if the law enforcement officer is either driving aside of that vehicle or the next one immediately behind. Yeah, someone can probably say, oh, 10-A333 didn't move over and he's down the road seven miles already. That's not going to be good enough for that law enforcement to pick that individual up. I'll agree with Senator Chambers. I think this is a bill that should not be passed. The committee amendment stated, you know, that we was going to not put the signs up, and I think that reason that that was put in there is because we did not want to have the expense of the state to put those signs up. Yes, they probably should be put up if we want to enforce that law. So I think this is a bill that I think, you know, is going to take some time and I am going to see, you know, that if this bill would be passed that it will be passed in the right form. But I don't see how we can put it in the right form at the present time, I really don't. This is just a feel-good bill. It's a feel-good bill. People should move over, but don't we give the people any credit that are driving down the roads that they have some smarts that they're going to move over when they see something in distress along the side of the road? I give people the credit that they do have enough sense to do that. I'm not one to say, oh, those people going down the interstate, they're not very intelligent; they're all on the cell phone, they're not paying attention. I think they are paying attention, the majority of them are, and they will respect the people that are in distress along the side of the road. And, you know, if there's emergency vehicles along the side of the road, people that are trying to help other individuals, people will move over. Let's give these people some credit. I think we need to just give them that opportunity that people in Nebraska do have education, are smart enough. I will not support this bill. I will try to do everything possible to make sure that this bill is not enacted... [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR STUTHMAN: ...if it's in the way it is right now. Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Chambers, you're recognized. [LB786]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, the reason I made reference to another section is that on--and I'm trying to help with this bill, even though I don't like it, to get clarity--on page 3. Senator Howard, I would like to

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ask if she would answer a question, Mr. President? [LB786]

SENATOR LANGEMEIER: Senator Howard, would you yield? [LB786]

SENATOR HOWARD: I will. [LB786]

SENATOR CHAMBERS: Senator Howard, on page 3, in subsection (5) we see this language talking about "For purposes of this section," the one that I was asking you about, authorized emergency vehicle is described and it says, "in addition to those vehicles set forth in Section 60-610." They're talking about authorized emergency vehicles. Then we can go further: "vehicles operated by the Department of Roads, Nebraska State Patrol motorist assistance vehicles." Now there is no comma between "Patrol" and "motorist assistance vehicles." Does that mean there is such a thing as a Nebraska State Patrol motorist assistance vehicle? I don't know. Is there? [LB786]

SENATOR HOWARD: I don't...I don't believe there is. [LB786]

SENATOR CHAMBERS: I see that the...I'm... [LB786]

SENATOR HOWARD: You are correct, there should be certainly a comma. [LB786]

SENATOR CHAMBERS: People are nodding their head, saying yes. Okay. So then we go forward: "and United States Department of Transportation registered towing or roadside assistance vehicles." Do you see that? [LB786]

SENATOR HOWARD: I'm on page 3 with you and I'm looking... [LB786]

SENATOR CHAMBERS: Yes, and then we continue from the bottom of the page, look in line 24: "Nebraska State Patrol motorist assistance vehicles"...are you there? [LB786]

SENATOR HOWARD: I am. [LB786]

SENATOR CHAMBERS: Then we continue: "and United States Department of Transportation registered towing or roadside," we continue, "assistance vehicles." Now nothing talks about a road assistance vehicle. Is the road assistance vehicle the same as a roadside assistance vehicle or are the two of them different? Senator Howard, I'm asking if she'll be allowed to answer, Mr. President. [LB786]

SENATOR LANGEMEIER: She's still on, yes. [LB786]

SENATOR HOWARD: All right. Thank you. It's my understanding they are and possibly this is... [LB786]

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SENATOR CHAMBERS: Okay, you feel that they are. Let me ask you this question. Are there vehicles with all kind of stickers on them that advertise various automobile products, and they're vans, and they are called assistance vehicles. You're not talking about those kind of roadside assistance vehicles. You're talking about strictly towing vehicles. [LB786]

SENATOR HOWARD: No, I'm also talking about those, the motorist assistance vehicles. You're correct in your description of them. [LB786]

SENATOR CHAMBERS: But we don't have a definition of roadside...of road assistance vehicle, so a person could think that road assistance vehicle is a shorthand for roadside assistance vehicle, which would be a towing vehicle. [LB786]

SENATOR HOWARD: The term...these terms are used by the AAA to describe both the motorist assistance van, which is staffed by volunteers and is there to assist stranded motorists, and also the tow trucks. [LB786]

SENATOR CHAMBERS: But why should a person have to go to a manual of AAA to understand what he or she is going to be charged with a crime for according to Nebraska statute? Shouldn't there be definitions whenever we're creating a criminal statute? Because, whether you realize it or not, this is a criminal statute? [LB786]

SENATOR HOWARD: Well, Senator Chambers you make a good point and I think in order to clarify this, if you feel that that's needed, I'd be more than happy to work with you to get this language down in a fashion that's understood before we get to Select File. [LB786]

SENATOR CHAMBERS: And that's all I will ask you. I want to kill this bill. Members... [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR CHAMBERS: Members of the Legislature, every criminal statute must be drawn with precision. There cannot be vagueness. There cannot be ambiguity. And a criminal statute is strictly construed. Any ambiguity goes to the benefit of the one who's going to be charged, but if there's enough ambiguity, the statute is considered so vague as to violate the constitution, because it does not give adequate notice to a person of what conduct is allowed and what conduct is criminalized. And if reasonable people can differ as to the meaning of the terms, then that is too vague. They should have defined these terms. This is a criminal statute. [LB786]

SENATOR LANGEMEIER: Time. [LB786]

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SENATOR CHAMBERS: Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator. Thank you, Senator Chambers. (Visitors introduced.) Returning to discussion on the committee amendments to LB786, those wishing to speak, we have Senator Howard, and Senator Chambers. Senator Howard, you are recognized. [LB786]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I appreciate Senator Chambers' concerns. He has the fine ability to always make bills better when he sets his mind to it. I'd like to refer to the terminology that Senator Chambers was drawing our attention to. That's on the bottom of page 3. It's line 25. This refers to the United States Department of Transportation registered towing and roadside assistance vehicles. And if I may ask Senator Chambers a question or two? [LB786]

SENATOR LANGEMEIER: Senator Chambers, would you yield? [LB786]

SENATOR CHAMBERS: Yes, yes, yes. [LB786]

SENATOR HOWARD: Thank you. (Laughter) So that I better understand this myself and have a clear picture of where the corrections need to be, do you feel that this is...this doesn't define the tow truck and the motor assistance van? [LB786]

SENATOR CHAMBERS: Here's what I'm basing that on, Senator Howard. When we were discussing back and forth, you said these are terms that AAA uses. I think I heard you say that. And we were not talking about these terms at the bottom of page 3, because I called attention to those, trying to assist, and mentioned a statute that was cross-referenced. Then I took us back to page 2 where we have the term "road assistance vehicle," and I presume that was the one you meant AAA had given a meaning to. But if we read the language of the statute, we don't know that that's something different from this term "roadside assistance vehicle." But since the two terms are different, we have to presume they are different in a criminal statute. If at the bottom of page 3 we're talking about something that the United States Department of Transportation has registered, that might be sufficient and it might not, because they could change. But that's beside the point. I haven't gotten that far yet. We have another term up here which is not defined by the United States Department of Transportation and the United States Department of Transportation simply has registered one of these types of vehicles. So I'm not trying to be tricky. I'm just mentioning that the language that's here creates questions. But I'm not going to offer amendments to improve the bill. I'm going to offer amendments to cripple and kill it. [LB786]

SENATOR HOWARD: Well, that does answer that question. (Laugh) I would appreciate the opportunity to work with you, Senator Chambers, to provide clarity whenever it would be possible. I, of course, don't support killing the bill. I think this bill is necessary

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for public safety. And I think after the four years we've spent together, that you know that's my concern, is protection and trying to prevent things that unfortunately do happen in our society and are tragic for families. I welcome your assistance and I hope we can work on this. Thank you. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Howard. Senator Chambers, you are recognized. [LB786]

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Howard must distinguish between the executioner and the surgeon. The responsibility for the surgeon, under the Hippocratic Oath, is to first do no harm. Now if I were in the role of a surgeon, that's what I would be doing with her bill. But as the executioner, my job is to separate a person's body from his or her head as cleanly as possible with one stroke. So either I can do it with one clean stroke and kill this bill, or do it by means of the death of a thousand cuts. It matters not to me. But I have to emphasize this is a criminal statute. It creates a crime. Nothing is a crime in Nebraska unless the statute makes it so. This statute is addressing conduct which occurs right now and is not a crime, in and of itself, and is making that conduct criminal. All criminal statutes are narrowly construed. That means the court is not going to go beyond the wording of the statute and correct any deficiencies that may exist because of vagueness, indefiniteness or ambiguity, and an ambiguity exists in this statute. But even if it did not, I'm opposed to what this bill says. Here is an assertion that I made and nobody challenged me: This will come into play only if there are three lanes moving in the same direction, a three-lane highway. Somebody could have argued and said that's not true, the cars will be stopped on the shoulder; if they're on the shoulder there will be two adjacent lanes of traffic moving in the same direction. But the bill does not say that they need to be on the shoulder before this bill takes effect. So I could argue that under the language of this statute there must be at least two adjacent lanes of traffic which are open, which are open. And if there are only two lanes going the same direction and the vehicles are on the shoulder, the lane closest to that action may not be open. The lane on the other side may not be open, but the close lane is. Well, I don't have to move over because I can't move over into that lane where there's already traffic. And if there is not traffic, I could say there is not another lane between me and this action that's going on, on the side of the road. And people might be scratching their head and saying, well, why do you even have a bill like that? All people have to do is go over. And who's going to be there to enforce it? If the officer is giving a ticket or doing something by the side of the road, that officer should not stop doing that to try to enforce somebody moving or not moving over. So what is the officer allowed to do? And officers can do this. The officer could stop and order you, hey, pull over, pull over. And if you don't pull over, you have disobeyed a direct lawful order. And if there's some way that officer could radio down the road and describe your vehicle adequately, you could be stopped and ticketed on the word of this officer who told you to pull over and you didn't. This creates all kind of problems in the real world. It sounds good. And I know Senator Howard has nothing in mind other than

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to try to improve safety, but not everything that can be done by the Legislature ought to be done. There are many, many things we can do. [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR CHAMBERS: We can make any conduct criminal that we choose to unless it is made lawful and allowed to be engaged in without it being a crime under the U.S. Constitution or the constitution of this state. Anything else we can criminalize, but we don't criminalize all types of conduct simply because we can, and this is one of those areas where we should not. Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Stuthman, you're recognized, followed by Senator Howard. [LB786]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I will say that I am very much concerned, you know, about emergency people that are along the side of these roads. I am. I am concerned about the safety of those individuals. But I look at it in a practical stand as far as these emergency vehicles along the side of the road and a lot of areas there are, you know, State Patrol officers not in the area, you know, and what is going to happen, you know? Are they going to try to get a license number, report that one, and to prove that they were the ones that were not moving over? I think this is something that's going to be a real, real task to police. And I'm going to discuss this a little bit more, but at the present time I want to give the balance of my time to Senator Chambers. [LB786]

SENATOR LANGEMEIER: Senator Chambers, 3:50, 3 minutes, 50 seconds. [LB786]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Stuthman. Members of the Legislature, I see on occasion State Patrol cars, county sheriff vehicles, city police cars on the shoulder of the road with their lights flashing and no other vehicle there except them, no other vehicle except that one. If that car is sitting there and the lights are flashing and I don't see another vehicle, well, to me there's no danger to an officer because the officer is in the car. There's no other car there, so I don't pull over, and in those situations I don't. Well, now I can be stopped and that car could just be sitting there waiting. I've got no warning that, whenever one of these vehicles is stopped and the flashers going, I've got to pull over. So then I can be pulled over and I can be ticketed. It can be a trap for the unwary, and law enforcement should not be encouraged to set traps for the unwary. And if you're a person of my complexion then you run a double hazard. Senator Wallman drives by and nothing happens. I drive by and I'm pulled over. And the officer can write on the ticket the number of the statute which says I've got to pull over if the lights are going, and the lights were going. He pulled me over because I didn't stop, and I'm charged and Senator Wallman is not. That happens. I am not in favor of giving law enforcement any opportunities to have contact with the public

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when not absolutely necessary when the contact can lead to the charging of a crime. Now if they are contacting a citizen, a resident, a driver to render assistance, that's different. That is a part of protecting and serving. But when you can create in the statute opportunities to stop people and charge them with a crime, that's a no-go for me. And remember this: If they stop the wrong car, they stop me and give me a ticket and I go to court and I can show that they didn't have my license number, the cop had no reason to stop me, then the judge dismisses the ticket. But they laugh at me. You know why? Because they stopped me, first of all; they had me beside the road where everybody passing can see that I'm in the custody of the police; then they made me go to court; and if I'm going to hire a lawyer, they made me spend money on a lawyer. So they won. They won and I didn't do anything that was wrong. And this is the kind of pernicious legislation, with the noblest intent, which has a result that is not noble. [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR CHAMBERS: And throughout everything I'm saying, the criticisms I'm making, none of them is directed at Senator Howard. No one of them or any of them in combination would be designed to question her motivation. I know, as much as I can, that her intentions are pure and she wants to help, but this is not going to do it. And I'd venture to say that you couldn't get a lot of law enforcement people who are out there on the highway to say that they want to enforce something like this. They, themselves, know how to be careful. And since I have just a minute or so...I won't go further because I can't develop the thought. Thank you, Mr. President. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Howard, you are recognized. [LB786]

SENATOR HOWARD: Thank you, Mr. President, members of the body. If I could ask a few questions from Senator Stuthman. [LB786]

SENATOR LANGEMEIER: Senator Stuthman, would you yield? [LB786]

SENATOR HOWARD: All right. [LB786]

SENATOR LANGEMEIER: Senator Stuthman said he would yield. One moment. [LB786]

SENATOR HOWARD: Oh, all right. Well, there he is. (Laugh) [LB786]

SENATOR STUTHMAN: Yes. [LB786]

SENATOR HOWARD: Thank you. Senator Stuthman, I've listened to your concerns regarding this particular bill and I would just like to engage you in a little conversation.

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You and I have worked together for four years now. We've sat on the Health and Human Services Committee together and I've heard your concerns regarding children and families and, of course, share those. And I am thinking back to the safe haven bill that I worked with you on, assisted you on, especially this last year, and I remember clearly your saying that if only one child could be saved, one infant, that that was worth it to you to advance that bill. And I appreciate that concern and certainly I feel the same way, which is why I supported you on that. My feeling is very similar. I'm here today on this bill, LB786, because I'm concerned about every individual who's out there on the side of the road trying to help us when we run into an unforeseen problem, whether it be a flat tire or it's a sideswipe or whatever could happen on...to someone who's out driving every day. And I've talked to a number of the roadside assistance people. Those are retired individuals who are volunteering, who are out there every day on the road because they care about us, and I just...I want to make it clear that my motivation with this is purely if we can save one life it's certainly worth it. It's unfortunate that in our society everyone isn't gifted with common sense, as we might think they would be, so that they can realize when they come upon a scene or an accident or flashing lights on the side of the road that they should move over when it is possible to do so, but that's not always the case. And as you can see from the photos that I handed out on the floor, that's definitely not the case. Senator Stuthman, if I could draw your attention to the first photo, up in the left-hand corner there's an NSP40. You can see the...you can see the state trooper on the side of this van and what you can't see clearly, because this was taken from a video, what you can't see clearly is this van is being sideswiped by a tanker truck. That's the blur on the left-hand side. The video was in the patrolman's car behind the van. The next picture, if you want to follow the sequence here, the patrolman's car on the side of the road, you can identify the patrolman's car, it's got the emblem on the door, that's what happened to the patrolman's car when that tanker sideswiped it. The last picture with the vehicles on the side of the road, those are the demolished vehicles from that collision. And I think I'd be safe in saying that you would support me in saying if we saved even one life with this legislation it's worth it. I hope these pictures are of some assistance. They certainly had impact on me. I appreciate your concerns about this legislation. I hope you'll look at these pictures carefully. And I'd also like to say I appreciate Senator Chambers' concerns. I have the greatest of respect for him and the work that he's done here. [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR HOWARD: Did you say time? [LB786]

SENATOR LANGEMEIER: One minute. [LB786]

SENATOR HOWARD: Oh, thank you. Thank you. And I appreciate, too, that he knows me well enough to know that my intentions are preventative, to save even one family from the anguish of losing a family member in a needless tragedy. I'm not going to

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pursue this bill at this time because I think it really isn't fair to all the rest of you in this body to have your legislation delayed for eight hours while Senator Chambers works to take it down. Thank you. [LB786]

SENATOR LANGEMEIER: Thank you, Senator Howard. Mr. Clerk, for a motion. [LB786]

ASSISTANT CLERK: Mr. President, I do have a priority motion. Senator Howard would ask unanimous consent to bracket the bill till April 6, 2008. [LB786]

SENATOR LANGEMEIER: Are there any objections? So ordered. (Visitors introduced.) Mr. Clerk, items for the record. [LB786]

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Business and Labor reports on an appointment to the Commission on Industrial Relations; amendments to be printed, Senator Loudon to LB986; a series of interim study resolutions, LR301 through LR305, introduced by Senator Pahls. (Legislative Journal pages 1119-1124.) [LB986 LR301 LR302 LR303 LR304 LR305]

SENATOR LANGEMEIER: Thank you. Continuing on the agenda to LB308. Mr. Clerk. [LB308]

ASSISTANT CLERK: Mr. President, LB308, introduced by Senator Stuthman. (Read title.) The bill was read for the first time on January 11, referred to the Health and Human Services Committee. That committee reports the bill to General File with committee amendments. (AM2016, Legislative Journal page 716.) [LB308]

SENATOR LANGEMEIER: Thank you. Senator Stuthman, you're recognized to open on LB308. [LB308]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. LB308 is Automated Medication Systems, and it does have an amendment and I'm going to...the amendment does become the bill and I'm going to end my opening; give you the details of the amendment at this time. And what this bill does, it allows hospitals and retail pharmacies to use automated machines to dispense and administer drugs to patients. These machines are already being used in many hospitals and pharmacies in Nebraska. If a hospital or pharmacy wishes to use this technology then the pharmacist must develop policies and procedures to address those requirements that are listed in Section 4 of the bill...of the committee amendment. There are two types of automations. retail pharmacies can use the machines to prepare medications, to be verified and dispensed by the pharmacist to a patient. And this would be that a machine is there, it counts out the dosages, the amount of pills, and puts them in a bottle and labels them. And the pharmacist then makes sure that this is all taken care of before it is given to the

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patient. Hospitals can use these machines to prepare medications to be given to patients by a nurse, doctor, or a pharmacist. The policies and procedures will outline who can have access to these machines, who can fill and verify the medicines put into the machines, and who can take the medicine out of the machines. These machines will be located in a retail pharmacy or in the medicine rooms of a hospital or on certain departments or floors of different hospitals. This does not allow the use in long-term care facilities at the request of the Health and Human Services. The Nebraska Pharmacists Association will be working on this piece through the interim. LB308 is designed to recognize telepharmacy in Nebraska like we recognize telehealth, and that is what is going to be coming in the future, and I think this is very important, that we try to establish this at the present time. What this bill does, LB308, it allows a hospital to contract with a pharmacist off site, like a Lincoln pharmacist working with a rural hospital, and the pharmacist has access to the patient's information, via a secured system, to review medicine orders for patients in hospitals with 24/7 pharmacist coverage. LB308, as amended, prohibits the use of the vending machine type medicine dispensing directly to patients. This will not dispense it directly a patient. A patient will not be able to go there on his own to get his medicine at that time. The Nebraska Pharmacists Association, the Nebraska Medical Association, Nebraska Hospital Association, Nebraska Health Care Association, and the Department of Health and Human Services were all involved in this legislation. I think this is something that with the telehealth and telepharmacy, I think this is something that's coming into the future and I think this is something that we need to try to establish and it's for the safety of the patients, of the consumers of the medications. So with that, those are my opening. I know there is a committee amendment but at this time I would like to give Senator Aguilar the rest, the balance, of my time. [LB308]

SENATOR LANGEMEIER: Senator Aguilar, 6 minutes. [LB308]

SENATOR AGUILAR: Thank you. Thank you, Senator. Thank you, Mr. President and Senator Stuthman. I appreciate this. I think this is going to be a good bill, but I'll share with you and the body that I did have a long discussion with not only Senator Stuthman but Senator Johnson as well with my concern, because of specific language in the bill that says not to be used by long-term care facilities. The VA home in Grand Island has been looking at getting one of these units that will greatly improve the service to our veterans in that area, and we were very concerned that those language...that language that I referred to would restrict that. We've, since then, have been doing some research. Right now it looks like, since we have our own stand-alone pharmacy there, that we will be allowed to utilize this and take advantage of this program. So in the meantime, you know, I am going to encourage support of this legislation to move forward. If our research shows that it would be a problem for the home, I would ask Senator Stuthman, Senator Johnson to work with me and try to correct that impediment, if they would. Thank you, Mr. President. [LB308]

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SENATOR LANGEMEIER: Thank you, Senator Aguilar and Senator Stuthman. As the Clerk has stated, there are committee amendments, offered by Health and Human Services. Senator Johnson, as Chair of that committee, you are recognized to open on the committee amendments. [LB308]

SENATOR JOHNSON: Thank you, Mr. President. Yes, committee amendment AM2016 is the committee amendment to LB308. This amendment replaces the bill, as introduced, and it does narrow the scope and application. The amendment adopts the Automated Medication Systems Act and it defines these terms. Here are some of the key points. The amendment prohibits, quote: any automated machine that dispenses, delivers or makes available, other than by the administration, prescription medication directly to the patient or the caregiver. The amendment requires a hospital or pharmacy that uses an Automated Medication System to develop, maintain and comply with the policies and procedures for the use of this machine. The amendment provides, at a minimum, that those policies and procedures have to address. The amendment provides that a prescription medication distribution machine may be operated only in a licensed pharmacy, where the pharmacist dispenses the medication to the patients for self-administration pursuant to a prescription. The amendment provides that an automated medication distribution machine may be operated only in a hospital for medication administration, pursuant to a chart order by the licensed healthcare professional. Drugs placed in the automated medication distribution machine must be in the manufacturers original packaging or in containers repackaged in compliance with both state and federal laws, rules and regulations. The amendment provides further requirements for the pharmacist's remote order entry. Violators are subject to disciplinary action by Health and Human Services Department. Amendment permits pharmacists to engage in telepharmacy unless specifically limited by the Board of Pharmacy or the Department of Health and Human Services. This amendment also does have the emergency clause. With that, Mr. President, thank you. [LB308]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on AM2016, the committee amendment offered to LB308. The floor is now open for discussion. Those wishing to speak, we have Senators Aguilar, Wallman, Gay, and Loudon. Now, Senator Wallman, you are recognized. [LB308]

SENATOR WALLMAN: Thank you, Mr. President. I'd like to engage in a little conversation with Senator Stuthman. [LB308]

SENATOR LANGEMEIER: Senator Stuthman, would you yield to a question from Senator Wallman? [LB308]

SENATOR STUTHMAN: Yes. [LB308]

SENATOR WALLMAN: Thank you. Senator Stuthman, do any other states have this in

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place? [LB308]

SENATOR STUTHMAN: Yes, there are other states that do have this, that is enacted already at the present time. [LB308]

SENATOR WALLMAN: Has it been successful? [LB308]

SENATOR STUTHMAN: Yes, very successful. One of the most important parts of the success part of it is, is the fact that in some of the pharmacies where they have the machine, the pharmacist in there punches in what kind of medicine he wants and how many pills they want. It just automatically fills the prescription. He looks over it, puts the label on and then gives it to the customer, where otherwise, you know, at the present time, they're sitting there, and they're counting them out, two, four, six, eight, ten; and it's for safety reasons also. [LB308]

SENATOR WALLMAN: Okay. Thank you. Thank you, Mr. President. [LB308]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Gay, you're recognized, followed by Senator Louden. [LB308]

SENATOR GAY: Thank you, Mr. President. I just wanted to rise in support of this bill and commend Senator Stuthman for his persistence on the bill. In Nebraska, as we've discussed many times, as we get in more rural areas, there aren't the 24/7 pharmacies that are always available and this is good for a lot of counties even where there's no pharmacy, as we had a handout in the committee and it seems like in the urban areas there's a 24-hour pharmacy popping up on about every corner. There's 127 in Douglas County alone and many of those are 24 hours. But then as we looked at the state, I have a little handout they handed out, many of the counties have either one pharmacy or no pharmacies out there, and I think this could be a tool. And even if they had one or two maybe, they aren't 24/7. So if in the middle of the night you need something, it's a real convenience to maybe call the doctor and he has this system and could get it out there. It has been used in other states. I think Senator Stuthman is being progressive bringing this early. As we look at telehealth and telepharmacy, some of these things, we're using technology that really a lot of us are already taking for granted, as you, you know, you can check out of stores now and check yourself out and do all these different things, so this is just keeping up with it. And I think the real benefit here, it will help more of the rural areas that don't have, you know, the 24/7 pharmacy. So I'd encourage your support and on the amendment and the bill. Thank you, Mr. President. [LB308]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Louden, you're recognized. [LB308]

SENATOR LOUDEN: Thank you, Mr. President and members. Would Senator

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Stuthman yield for a question, if he would, please? [LB308]

SENATOR LANGEMEIER: Senator Stuthman, would you yield? [LB308]

SENATOR STUTHMAN: Yes. [LB308]

SENATOR LOUDEN: Senator Stuthman, as I listened to the description of the bill from Senator Johnson, my mom was in assisted living and once a week they brought her medication into this assisted living and they had a box in her room and there was a code to get into that box. And of course, when they dispensed her medication to her, somebody had to poke the code and they get in there and get the prescriptions out of there for her, and then that was taken care of. The pharmacy came in, I think once a week, and refilled what was necessary for the week and that sort of thing. As I look this over, will that...will this bill anyplace interfere with what those people are already doing? Because I thought...did I catch it correctly that Senator Johnson said something about it had to be in a hospital or something like that or you had to be certified to do that? [LB308]

SENATOR STUTHMAN: Senator Louden, I am not totally sure on this, but I do not think this will interfere with that, because that's a method that is already in place for that long-term care facility. But these machines, machines that we're talking about in this will, you know, will be a separate machine. Yes, you know, what you're stating is there's a small box with a code and everything is taken care of by the pharmacist and everything like that. These machines, you know, will be in the rural hospitals, is where they will be, and they're not in, at the present time, and which may happen in the future that they will be in long-term care facilities, but at the present time we're only dealing with the hospital part of it. And I think if there's a situation that you have, where there's a system that is working there already, I'm almost positive this will not interfere with that. [LB308]

SENATOR LOUDEN: Okay. Thank you, Senator Stuthman. And I would hope that between now and Select File I could find out for sure because I would certainly support this but I don't want to support something that would interfere with a system that works quite well now. Because this way the assistants in those nursing homes don't have to drive this little cart down the hallway all the time. The medication is already set out in each patient's...resident's room, and so it did save a lot of time for them to do that. So with that, I would support the amendment and I would like to find out between now and Select File if this does not interfere with what they do in the nursing homes now. Thank you, Mr. President. [LB308]

SENATOR LANGEMEIER: Thank you, Senator Louden. Seeing no other lights on, Senator Johnson, you are recognized to close on the committee amendments. [LB308]

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SENATOR JOHNSON: Mr. President, I'd ask that we push the green light for AM2016 and follow that by supporting Senator Stuthman's bill, LB308. Thank you. [LB308]

SENATOR LANGEMEIER: You have heard the closing on AM2016, offered to LB308. The question before the body is, shall AM2016 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB308]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB308]

SENATOR LANGEMEIER: The amendment is adopted. We return now to discussion on LB308, the bill itself. Seeing no lights on, Senator Stuthman, you are recognized to close on LB308. [LB308]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I want to thank everyone that was involved in the discussion. I think this just shows that we are, you know, working to try to utilize the expertise of telemedicine, telehealth, telepharmacy, and I think this is something that's going to be utilized very much in the future. So I would ask for your support in passing LB308. Thank you. [LB308]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. You have heard the closing on LB308. The question before the body is, shall LB308 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB308]

ASSISTANT CLERK: 30 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB308]

SENATOR LANGEMEIER: LB308 does advance. Mr. Clerk, LB1072. [LB308 LB1072]

ASSISTANT CLERK: Mr. President, LB1072 is introduced by Senator Friend. (Read title.) Bill was read for the first time on January 22, referred to Urban Affairs. That committee reports the bill to General File with committee amendments. (AM1843, Legislative Journal page 643.) [LB1072]

SENATOR LANGEMEIER: Thank you. Senator Friend, you are recognized to open on LB1072. [LB1072]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I think, as a light note right out of the gate, this is kind of a story here with the Urban Affairs Committee of a little dog and a big dog, and LB1072, for all intents and purposes, is kind of a little dog. It does some things, important things. The big dog comes in an

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amendment here in a little bit. I'll explain both. LB1072 is a bill that would change provisions of the State Natural Gas Regulation Act regarding certain natural gas rate filings, and it would extend the general statutory prohibition on ex parte communications to contested cases arising under the State Natural Gas Regulation Act. Provisions of the bill were proposed by the formal action of the Public Service Commission and were introduced at its request. Before we adopted the State Natural Gas Regulation Act, which is LB790 in 2003, natural gas regulation was a local responsibility. Natural gas rates were set by each city and village through a process which involved the creation of rate area coalitions of cities and villages that conducted the investigation and determined what rates were appropriate. At the request of some of those cities and villages that had good experiences with negotiated rates, LB790 included a provision, which is Section 66-1838, which provided a means for municipalities to continue to help set rates on a negotiated basis with the agreement of the affected natural gas utility, and the cities representing more than 50 percent of the ratepayers in the area. After the initial filing of the utility requesting a general rate review, the cities in the area have 60 days to file with the PSC evidence of their intent to negotiate new rates. Now under current law, if the rate case is not certified for negotiations, the Public Service Commission has 210 days from the date of its initial filing requesting the rate change to determine new rates. The proposed change in the bill, page 7, lines 4 to 10, would provide that the 210-day period would not begin...would begin to run not from the initial filing but from the end of the 60-day certification period or the date that the commission received notice or documentary evidence of the rejection of the negotiation from cities representing over 50 percent of the ratepayers, whichever is earlier. This change would, more or less, help ensure that the commission and the public advocate would have sufficient time to pursue proper investigations of rate change requests if negotiations will not be pursued. The second issue, or Section 2 in this bill, amends Section 75-130.01 dealing with the authority of the Public Service Commission also. The amendment would provide that the general PSC rule prohibiting ex parte communications...ex parte communications, by the way, meaning communications between a member of the commission, its staff or its employees, with only a single party in a contested case before the commission. It would also apply to communications in contested cases arising under the State Natural Gas Regulation Act. We have a committee amendment that actually changes the amount of days. That amendment is coming up. I'd be happy to...I will be happy to explain that. As of right now, Mr. President, that's all I'd have on LB1072. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Friend. As you have heard from the Clerk, there are committee amendments offered by Urban Affairs Committee. Senator Friend, as Chair of that committee, you're recognized to open on the committee amendments, AM1843. [LB1072]

SENATOR FRIEND: Thank you, Mr. President. Continuing with the little dog, if you will, AM1843 is an amendment that would constrict and further limit the amount of time that

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the PSC would have to pursue a general rate case...would have to pursue a general rate case after the failure of the parties to certify the issue for negotiations. The current 210 days allowed, as I had mentioned earlier in the bill, would be shorted to 180 days. As provided in the bill, the time period would still continue to run from the end of the 60-day certification period or the date that the commission receives notice or determines that cities representing over 50 percent of the ratepayers have rejected negotiations, whichever is earlier. In essence, the amendment provides that the total amount of time available for the commission action would be reduced to 30 days. The amendment was presented at the hearing on the bill and was consented to by the representative for the commission in public testimony on the bill. Mr. President, that's all I have on the committee amendments. I'd be happy to answer any questions if any members have any. Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Friend. You have heard the opening on LB1072 and the committee amendments, AM1843. The floor is now open for discussion. Senator Chambers, you are recognized. [LB1072]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Friend and I both agree that the process has been moving bills along too rapidly, so it's appropriate that he and I kind of slow things down a bit. And he also said he would be happy to answer questions of any of the members. And when I can make one of my colleagues happy, which does not happen very often, I like to oblige. Senator Friend, I'm looking at your committee statement. Would you turn to it, if you don't mind? [LB1072]

SENATOR FRIEND: I don't mind. [LB1072]

SENATOR LANGEMEIER: Would you yield? [LB1072]

SENATOR FRIEND: Yes, I will. I don't mind and I have it right here. [LB1072]

SENATOR CHAMBERS: When I look at the vote results, I see when it says no. Zero is no, right? [LB1072]

SENATOR FRIEND: Correct. [LB1072]

SENATOR CHAMBERS: I see present and not voting, zero, correct? [LB1072]

SENATOR FRIEND: Correct. [LB1072]

SENATOR CHAMBERS: How can zero be present and not voting and, at the same time, vote no? (Laughter) [LB1072]

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SENATOR FRIEND: I don't know. [LB1072]

SENATOR CHAMBERS: Okay. Good enough. Now continuing with our analysis, you have three people listed as being absent, correct? [LB1072]

SENATOR FRIEND: That...well, I didn't, but I remember that, yes. We do have three people listed on the committee statement as absent for the vote. [LB1072]

SENATOR CHAMBERS: Senator Friend, would you turn to the back side of this committee statement? [LB1072]

SENATOR FRIEND: Okay. [LB1072]

SENATOR CHAMBERS: Now at the very bottom I see some marks that look almost like hieroglyphics, except that hieroglyphics are more legible. Do you see what...do you recognize what it is that I'm referring to when I say I see something that looks something like scribble marks? [LB1072]

SENATOR FRIEND: My signature? [LB1072]

SENATOR CHAMBERS: That's your signature. [LB1072]

SENATOR FRIEND: I think so. [LB1072]

SENATOR CHAMBERS: Oh. But you're not sure? [LB1072]

SENATOR FRIEND: I'd have to look at it. I actually don't have the signature in front of me. I have a printed copy. [LB1072]

SENATOR CHAMBERS: But you see the printed copy. [LB1072]

SENATOR FRIEND: I will retrieve one right now. That is my signature. [LB1072]

SENATOR CHAMBERS: Now when you sign one of these statements, does that mean that it is your statement that you're signing? Are you responsible for this statement going out? [LB1072]

SENATOR FRIEND: Yeah. [LB1072]

SENATOR CHAMBERS: Or you're not. [LB1072]

SENATOR FRIEND: Yeah. Yes, I am, theoretically. [LB1072]

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SENATOR CHAMBERS: Okay. So then you have three people listed as absent, correct? [LB1072]

SENATOR FRIEND: That's correct, and that was unfortunate, but... [LB1072]

SENATOR CHAMBERS: Okay. Why were they absent? [LB1072]

SENATOR FRIEND: I don't recall. [LB1072]

SENATOR CHAMBERS: Did you ask? [LB1072]

SENATOR FRIEND: I suppose we can go around the room and ask now. No, I didn't. [LB1072]

SENATOR CHAMBERS: No, past tense, did you ask? [LB1072]

SENATOR FRIEND: No, I did not. [LB1072]

SENATOR CHAMBERS: Are these members of your committee? [LB1072]

SENATOR FRIEND: Yes, they are. [LB1072]

SENATOR CHAMBERS: Do you all get along fairly well? [LB1072]

SENATOR FRIEND: Well,... [LB1072]

SENATOR CHAMBERS: Is there a more or less collegial relationship? [LB1072]

SENATOR FRIEND: I believe we do. [LB1072]

SENATOR CHAMBERS: And you don't care enough to find out why they were not there. Is that true? [LB1072]

SENATOR FRIEND: Well, that's a decent question. I don't have an answer for you. And the honest answer is I don't have an answer for you. I think that this was discussed with other committee members and... [LB1072]

SENATOR CHAMBERS: But that's not what I asked you, so we'll leave that and come down here to proponents. Who were the two proponents listed? [LB1072]

SENATOR FRIEND: A commissioner for the Public Service Commission, named Anne Boyle... [LB1072]

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SENATOR CHAMBERS: Yes. [LB1072]

SENATOR FRIEND: ...and also the Nebraska public advocate, a gentleman named Roger Cox. [LB1072]

SENATOR CHAMBERS: And this now is a question really for information: What does the public advocate do? [LB1072]

SENATOR FRIEND: I believe...well, the public advocate, I believe, is a liaison--maybe that's not the proper term--but a liaison, to me, for the Public Service Commission. They work together quite often, it's my understanding, and based on my experience, as well. [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR FRIEND: And... [LB1072]

SENATOR CHAMBERS: Is the public advocate a part of the Public Service Commission? [LB1072]

SENATOR FRIEND: I don't believe that's true, no. [LB1072]

SENATOR CHAMBERS: Okay. So we don't have two people from the Public Service Commission. We have that person. Does this person--and I'm not trying to be facetious--advocate for the interests of the public, is that what this person is supposed to be doing when this person comes before you? [LB1072]

SENATOR FRIEND: Yes. And I... [LB1072]

SENATOR CHAMBERS: Okay. [LB1072]

SENATOR FRIEND: Okay. Yes. [LB1072]

SENATOR CHAMBERS: Okay. And opponents, it says none, correct? [LB1072]

SENATOR FRIEND: That's what I see as well. [LB1072]

SENATOR CHAMBERS: And when this individual who was neutral testified, what was...why couldn't that person take a position for or against, if the person said so and you remember? [LB1072]

SENATOR FRIEND: I know that person. I'd like to say that that person has difficulty taking a position on issues, but that's not the case. Honestly, I... [LB1072]

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SENATOR LANGEMEIER: Time. [LB1072]

SENATOR FRIEND: ...not to be flippant, I don't recall, Senator Chambers. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Your light is next. You are recognized. [LB1072]

SENATOR CHAMBERS: Thank you. Mr. President, thank you, and members of the Legislature, what does he represent or whom does he represent? [LB1072]

SENATOR FRIEND: Is that for me? [LB1072]

SENATOR CHAMBERS: Yeah...oh, I'd like to ask the Chairman, Senator Friend, that question. [LB1072]

SENATOR LANGEMEIER: Senator Friend, would you yield? [LB1072]

SENATOR FRIEND: Yes, I will. The neutral party was a gentleman...do you want me to name his name or should we...? [LB1072]

SENATOR CHAMBERS: That's all...yes. [LB1072]

SENATOR FRIEND: On this committee statement, he was representing Northwestern Energy. [LB1072]

SENATOR CHAMBERS: Now, is that to be Northwester' or is there an N missing? [LB1072]

SENATOR FRIEND: No, I think that there should be an N there. [LB1072]

SENATOR CHAMBERS: Are you sure? [LB1072]

SENATOR FRIEND: Yes. [LB1072]

SENATOR CHAMBERS: Has he appeared before you before? [LB1072]

SENATOR FRIEND: Yes, he has. [LB1072]

SENATOR CHAMBERS: And there's always an N at the end of the word. It's Northwestern rather than Northwester', correct? [LB1072]

SENATOR FRIEND: Yes. Yes, but I know of the company and it should be

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Northwestern. [LB1072]

SENATOR CHAMBERS: Okay. Have you ever heard of a northeaster'? [LB1072]

SENATOR FRIEND: Yes. [LB1072]

SENATOR CHAMBERS: And what is a northeaster'? [LB1072]

SENATOR FRIEND: It's a wind. [LB1072]

SENATOR CHAMBERS: Thank you. Senator Friend, give me one reason why I ought not vote for this bill. [LB1072]

SENATOR FRIEND: Did you just ask me, give you one reason why you ought not vote for this bill? [LB1072]

SENATOR CHAMBERS: Yes. You have to be objective as the Chairperson. Now, you could probably give me a hundred reasons why I should. Give me one why I should not. [LB1072]

SENATOR FRIEND: Okay. I think you could vote against this bill in good conscience because you don't...you would not see it necessary to give the Public Service Commission the type of leeway that we're giving them. [LB1072]

SENATOR CHAMBERS: And what exactly is the leeway that they're getting under this bill? [LB1072]

SENATOR FRIEND: We're giving them more time to deal with some of the communication issues that they've run into. They've found it fairly, I would say, constrictive. [LB1072]

SENATOR CHAMBERS: But after the committee heard the testimony and reviewed this, it was felt that they, in fact, really need the time that they're asking for to properly do their job, correct? [LB1072]

SENATOR FRIEND: I believe that, yeah, based on our discussions in Executive Sessions and also in other meetings. Sure. [LB1072]

SENATOR CHAMBERS: And I do see where they agreed apparently to the reduction from 210 days to 180 days in which to carry out the particular function that's being addressed within that time period. [LB1072]

SENATOR FRIEND: That is correct. And I know kind of why that happened if you would

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like me to explain it to you real quick. [LB1072]

SENATOR CHAMBERS: Yes. [LB1072]

SENATOR FRIEND: The gentleman that spoke in the neutral capacity that we were talking about actually raised that concern, that we are probably overextending with the original bill. So it was amended based on neutral testimony, in some ways. [LB1072]

SENATOR CHAMBERS: So, on occasion, a person who testifies in a neutral capacity is not just failing to take a position, but may have something very positive that can be added, and it may even become something adopted by the committee and ultimately enacted into law, correct? [LB1072]

SENATOR FRIEND: Yes, especially in that person's...that person is...I have great respect for, so. [LB1072]

SENATOR CHAMBERS: So when we look at a committee statement and we see where somebody testified in a neutral capacity, it should not automatically be assumed that this is a person who is afraid to take a position. There may not have actually been, since you used the analogy of a big dog and a little dog, there may not have actually been a dog in the fight which belonged to that person, but because of that person's interest in the overall area being considered, something could be offered that would be beneficial to the entire area. [LB1072]

SENATOR FRIEND: That's correct. And I didn't mean to be coy or...when I said that he couldn't make a decision... [LB1072]

SENATOR LANGEMEIER: One minute. [LB1072]

SENATOR FRIEND: ...you know, positively or negatively. I... [LB1072]

SENATOR CHAMBERS: No, I'm not basing it on what you said. [LB1072]

SENATOR FRIEND: Yeah, okay. [LB1072]

SENATOR CHAMBERS: I'm just saying this, because committee statements now, can be called up on this machine by people who are not members of the Legislature, and it might be good, on occasion, to let the public know that the fact that somebody testifies in a neutral position does not mean necessarily that they cannot make up their mind, but they don't really have an interest on one side or the other but are there for informational purposes and can really be helpful. Would you agree? [LB1072]

SENATOR FRIEND: I would agree. And also I have rarely found neutral testimony to be

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truly absolutely neutral. [LB1072]

SENATOR CHAMBERS: And have I been helpful this afternoon in our discussion?
[LB1072]

SENATOR FRIEND: I don't know. [LB1072]

SENATOR CHAMBERS: Thank you. (Laughter) [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Seeing no other lights on,
Senator Friend, you are recognized to close on AM1843. [LB1072]

SENATOR FRIEND: Thank you, Mr. President, and actually I do know. That was
somewhat helpful because he did...Senator Chambers touched on a couple of the
reasons that this bill came into existence. I would ask for the adoption of AM1843.
Thank you. [LB1072]

SENATOR LANGEMEIER: Thank you, Senator Friend. You have heard the closing on
the committee amendment, AM1843. The question is, shall AM1843 be adopted to
LB1072? All those in favor vote yea; all those opposed vote nay. Have all those voted
that wish to? Record, Mr. Clerk. [LB1072]

ASSISTANT CLERK: 30 ayes, 0 nays, on the adoption of committee amendments, Mr.
President. [LB1072]

SENATOR LANGEMEIER: AM1843 is adopted. Mr. Clerk, for a motion. [LB1072]

ASSISTANT CLERK: Senator Friend would offer AM2275. (Legislative Journal page
915.) [LB1072]

SENATOR LANGEMEIER: Senator Friend, you are recognized to open on AM2275.
[LB1072]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. And
this is the big dog I was talking about. This amendment is, in fact, a committee
amendment, more or less, to LB1095, an amendment which replaced the original bill.
LB1095 was carried by Senator Aguilar. The bill and the committee amendment
advanced from the committee on a 6-0 vote with one member absent. A little bit of
background. This is a complicated subject matter, folks, and I'm not trying to get your
attention here. Do whatever you need to do. But this is long and drawn out and it's a
little bit confusing. Under the federal Natural Gas Act, the Federal Energy Regulation
Commission, or FERC, has general authority over the transportation of natural gas and
interstate commerce. Everywhere between the wellhead and the start of a local

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distribution facility, which we call a town boarder station. All right. And there's one exception, and it's called the Hinshaw exception. A state regulatory body may assume jurisdiction over a pipeline transporting natural gas that would otherwise be under FERC jurisdiction if all the natural gas is received from an interstate pipeline in the state, all the gas transported is ultimately consumed in that state, provided that the rates and the service of the entities transporting and receiving the gas are subject to regulation by the state commission. For our purposes, these Hinshaw pipelines are referred to as intrastate pipelines or transmission lines. Okay, and that's an important...that's an important part right there. Last October, in response to an inquiry by the Nebraska Resources Company about constructing such a pipeline, the PSC opened an investigation of the jurisdictional issues, and indicated its intent to assume jurisdiction over the construction and operation of interstate transmission lines. Now, the decision was significant, very significant, but it had practical...the practical impact was enormous. If you go...if you have to go to FERC to get permission for a pipeline, for a transmission line, you can count upon a wait of 18 months to two years before you get approval. If you can go the PSC, you can get approval within six months. In terms of economic consequences to local companies and communities, a year or 18 months can be devastating. Now, I don't mean to drag him into it, but just ask Senator Flood about Norfolk's experience last year. He may even be willing to talk about it. One current statute poses a potential barrier to the effective use of this program: the prohibition against duplicative and redundant pipelines. One of the key elements of the original State Natural Gas Regulation Act, LB790 in 2003, that we talked about earlier, was the addition of what is now Section 66-1852. That provision is a prohibition against extending natural gas infrastructure into areas where there is an existing infrastructure. Folks, it's like this, and I wish I had a white board. You have a city with a town station up in the corner. If you had another one down in the other corner, if you run transmission pipes into both of those town border stations, that's dup piping. You can't do it according to the PSC. It rapidly became clear that the problem was really, really complex, okay? And the work and the effort of all the parties that we have lending to this amendment has been long and drawn out. The committee heard testimony that was very bizarre and, although, helpful. The work and the effort of all the parties in regard to these transmission lines and what you can do with them in this state has led to an amendment that generally addresses--generally addresses--all of the major technical concerns. So, in other words, we're trying to get rid of opposition. We believe, to a certain degree, that that's been done. Now, the amendment. The amendment reflects the public policy position of the original bill, but it's adapted into the circumstances of various...of those various interested parties that we talked about that engaged in discussion and that deliver natural gas throughout our state--the Aquila's, SourceGas, also municipally-owned, things like that. Current law represents a delicate balance between these parties. Trust me, it's very delicate. Section 66-1852 is serving to help prevent any of these parties from exercising a significant competitive advantage over another. We didn't want this to open up those wounds or possibly tip that balance. The balance became precarious with the decision of the Public Service Commission to assume

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jurisdiction over intrastate transmission lines--the transmission lines we're talking about that aren't like those jurisdictional pipelines. The amendments are designed to avoid jeopardizing the balance while permitting all those parties, consistent with their own interests, to enjoy the advantages flowing from the creation of transmission lines extended into service areas. It should be emphasized that the general prohibition against duplicative and redundant piping in the statute is not repealed by this act. This was very troublesome a few years ago. We are not repealing it. The changes in this amendment are defined and limited exceptions to the general prohibition, operable only when applied to transmission lines, and then only as defined and set forth in specific exemptions. The exception in the green copy of LB1095 is deleted. It's replaced by five new subdivisions--five new subdivisions--to Section 66-1852, which deals separately with each of those classes of parties that engaged in providing natural gas services in Nebraska. The new subdivision (3) applies to jurisdictional utilities. Private investor-owned natural gas utilities which are subject to the jurisdiction of the Public Service Commission--like Aquila, like SourceGas. This subdivision says that when these utilities extend a transmission line, the prohibition does not apply when the transmission line connects to the distribution facilities owned or operated by a jurisdictional utility. Subdivision (4)--it's new--applies to metropolitan utilities districts and jurisdictional utilities that operate in counties which there is located the natural gas service area or a portion of the natural gas service area of the metropolitan utilities district. This language mirrors language found in 66-1859. The law has recognized that a special set of rules were needed to apply to the issues arising from the existence of metropolitan utilities districts in this state, and jurisdictional utilities as well. New subdivision (4) attempts to maintain the current situation of the parties defined in 66-1858 to 66-1864. The exception found here only applies to transmission lines. All other pipeline extensions, by either a metropolitan utilities district or a jurisdictional utility in a metropolitan utilities district's county would still be governed and set out in current state law as found in those statutes. I think I'm going to run out of time. I'm almost done. New subdivision (4)(a)--I want to get all this on the record, that's why I'm doing it, all right--specifies that prohibition in subdivision (1) does not apply to the extension of transmission lines by a metropolitan utilities district to distribution facilities which it owns or operates. Subsection (b) further specifies that such a transmission line does not constitute an enlargement or expansion of its natural gas service area. That's really important. That prevents the idea that the MUDs and the jurisdictional utilities are going to do that--go to combat. [LB1072 LB1095]

SPEAKER FLOOD PRESIDING [LB1072]

SPEAKER FLOOD: One minute. [LB1072]

SENATOR FRIEND: This is for the specific purpose of preserving the arrangements existing under current state law while authorizing a metropolitan utilities district to provide itself with an additional source of natural gas to serve customers in its current

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service area. Three more subdivisions. I can go into those in a minute. Look, this amendment is not intended...the legislation is intended to permit competition for high-volume ratepayers where a jurisdictional utility has existing utility infrastructure in the area, but the utility cannot use transmission lines as a bypass strategy for cherry-picking outside the area where it already has such infrastructure. It's not intended to ignite retail gas wars and bypasses between MUD and Aquila or between Hastings and SourceGas or any other utilities. I have my light pressed. I would like to explain the other two subdivisions if I could. Thank you, Mr. President. [LB1072]

SPEAKER FLOOD: Time. And you're done. Senator Aguilar, you are recognized. [LB1072]

SENATOR AGUILAR: Thank you, Mr. President. And I'm going to yield my time so Senator Friend can finish up, if he'll give it back to me when he's done. [LB1072]

SPEAKER FLOOD: Senator Friend, you have 4 minutes, 52 seconds. [LB1072]

SENATOR FRIEND: Thank you, Senator Aguilar, and I've got my button pressed, as well. I'll give you more time. I do want to thank Senator Aguilar. He, obviously, produced the bill and brought it to the committee. We'll talk about that in a little while, as well. New subdivision (5). It applies to cities which own or operate their own natural gas utility. Okay, like a Hastings, whatever. The prohibition of subdivision (1) does not apply to transmission lines extended by such a city that are linked to the city's own distribution facilities. We're protecting their extraterritorial zoning jurisdiction. New subdivision (6)--only two more--defines what constitutes a transmission line. This is very important because this is where we're making sure that we're not causing the problems relating to duplicative piping. We're following the terminology generally accepted by the industry and used in federal regulations to set out the hierarchy of those natural gas pipelines. A transmission line is defined as being a pipeline, other than a gathering pipeline, which transports natural gas from a production facility or a distribution pipeline. Generally, the transmission line is a large volume, high-pressure pipeline, linking a distribution or an intrastate pipeline to distribution facilities that service main and service lines. Also, folks, they're very, very expensive to create. Very expensive. New subdivision (7), the final one, is aimed at...I believe...is aimed at clarifying the full extent of the exemption. In part, the original prohibition against duplicative and redundant piping was aimed at stopping a process called cherry-picking, which I talked about earlier in the closing...or the opening. Where a natural gas utility would seek to duplicate pipelines, and special arrangement to bring profitable, you know, large-volume users, like a...oh, a large volume user, an ethanol plant; oh, Super Wal-Mart; various things. It's shifting the unavoidable available costs...unavoidable basic costs of service of the original utility onto its residential user or small customer rate base. We don't want that to happen. By exempting jurisdictional utilities from the prohibition through the provisions of this bill, there was a concern that those transmission lines would be used to do that

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cherry-picking. Like I said, I think we've handled that with the amendment. Members of the Legislature, thank you for your patience. This bill...and I think Senator Aguilar is going to speak to this...no cost to taxpayers in the state. Sure, ratepayers are affected indirectly, but this is economic development. We talk about it all the time and we try to figure out how we can do it. This amendment is intended to facilitate growth and economic development in our communities, and recognizing the need of our natural gas utilities, public and private, for alternative or additional sources of natural gas through new transportation facilities linked to interstate pipelines. Thank you. That's all I had, Mr. President. [LB1072]

SPEAKER FLOOD: Senator Friend, your light is on next. Would you like to continue? [LB1072]

SENATOR FRIEND: I would like to give all that time to Senator Aguilar. Thank you, Mr. President. [LB1072]

SPEAKER FLOOD: His light is on after yours. Would you like to waive that? [LB1072]

SENATOR FRIEND: I'd like to waive it. [LB1072]

SPEAKER FLOOD: It is waived. Senator Aguilar, you're recognized. [LB1072]

SENATOR AGUILAR: Thank you, Mr. Speaker and members. I especially want to thank Senator Friend for that lengthy explanation, but it was necessary and it was very important to get all these details out. Now, what I want to do is speak to the bill from a community's perspective, and I'll be speaking to it from Grand Island's perspective, but you can take what I say and apply it to the same community that you're from, because this is going on all over the state. What this means to Grand Island, it means that future expansion of industry and jobs are in danger of being thwarted because any new industry or expansions need expanded supplies of natural gas that are not currently available. It means that because Grand Island's secondary electricity generation plant is fueled by natural gas, there is a very real danger of not being able to provide enough electricity to residents and businesses in the city of Grand Island during peak usage times. It means that the financial reality the city of Grand Island has already experienced a huge increase in the cost to run the secondary generation facility. The contract for the natural gas to run their generation facility went from \$176,000 a year to over \$1 million a year. To me, in my district, this is a question of future economic growth and having enough electricity to serve our current population during peak usage time. Last year, Norfolk lost a soybean processing plant over this very issue. And let me tell you a little bit about that, and you can get confirmation of this from Speaker Flood if you like, but we're talking about 150 jobs over a \$40 million facility, simply because they could not supply enough gas to it. I'm told that this situation is being repeated in many cities, large and small, across our great state. Making these exemptions to the natural

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gas regulation statute is nothing but free economic development. That's right--free. Are there other suppliers able to provide more natural gas? Yes. But the PSC ruling prohibits connecting to their transmission lines. PSC double-piping ruling is appropriate for a retail distribution system and is probably reasonable, given the language in the current law, but federal law allows this type of exemption for transmission lines if the company has two-plus years and lots of money to go through the application process. As we all know, nobody has that much time. This issue is better dealt with sooner rather than later. I especially want to thank Senator Friend, committee members, all his staff, as well as mine, interested parties for the many hours of negotiation they put into this bill in order to strike a very delicate balance between the differing interests involved. This does not eliminate the current double-piping prohibition, as Senator Friend explained to you. The amendment creates exemptions to that prohibition when dealing with transmission and supply lines but not the service lines that carry gas to consumers of homes and businesses. I hope I've explained to you the importance of why we need to put this legislation into law, and I hope you'll ask any questions if you don't understand something about it, but I urge you to move this forward as quickly as we can. Thank you, Mr. President. [LB1072]

SPEAKER FLOOD: Thank you, Senator Aguilar. There are no other lights on. Senator Friend, you're recognized to close on AM2275. [LB1072]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. Just to say I...there really wasn't a whole lot of discussion, but I appreciate your patience and listening to my droning on. Sorry it took so long. Thank you, Mr. President. [LB1072]

SPEAKER FLOOD: You've heard the closing on AM2275. The question before the Legislature is, should AM2275 be adopted? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB1072]

ASSISTANT CLERK: 28 ayes, 0 nays, on the adoption of Senator Friend's amendment. [LB1072]

SPEAKER FLOOD: AM2275 is adopted. Returning to discussion on LB1072. There are no other lights on. Senator Friend, you're recognized to close on LB1072. [LB1072]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I would ask for the advancement of LB1072, and thanks for the time. [LB1072]

SPEAKER FLOOD: Members, you've heard the closing on LB1072. The question before the body is, should LB1072 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB1072]

ASSISTANT CLERK: 31 ayes, 0 nays, on the advancement of the bill, Mr. President.

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[LB1072]

SPEAKER FLOOD: LB1072 advances to E&R Initial. Mr. Clerk, the next bill. [LB1072]

ASSISTANT CLERK: Mr. President, LB928. It was introduced by Senator Johnson. (Read title.) The bill was read for the first time on January 14 of this year, referred to Health and Human Services. That committee places the bill on General File with committee amendments. (AM2435, Legislative Journal page 1028.) [LB928]

SPEAKER FLOOD: Senator Johnson, you are recognized to open on LB928. [LB928]

SENATOR JOHNSON: Thank you, Mr. Speaker. This is not the Easter season. This is actually Christmas all over again, because this is the Christmas tree bill. One of the things that we have is that I have promised the Speaker that the ornaments that will be put on the tree here today will be well-polished and hopefully noncontroversial. As best we can tell, that is the case. If there are objections to any of these bills, obviously we will deal with that at the time. What LB928 itself actually does is it repeals the Hepatitis C Education and Prevention Act. The act was terminated on December 31, 2007. The committee has amendments to this bill, and we will talk of them at the discretion of the Speaker. [LB928]

SPEAKER FLOOD: Thank you, Senator Johnson. Mr. Clerk. [LB928]

ASSISTANT CLERK: Mr. President, there are committee amendments from Health and Human Services. [LB928]

SPEAKER FLOOD: Senator Johnson, you are recognized to open on AM2435. [LB928]

SENATOR JOHNSON: Thank you, Mr. Speaker. There are one, two, three, four, and five bills that we will go through, and again, we will identify the sponsor of each of these bills and discuss them as needed. First, LB738 is introduced by Senator Fulton. The bill amended by the committee is primarily a technical redrafting of the Brain Injury Registry statutes. The amended bill requires the department, within 30 days after receiving a report of a brain or head injury, to provide relevant and timely information to the person with the injury, to assist them in assessing necessary and appropriate services. The department may develop the information themselves or utilize information developed by other sources and approved by the department. The department may provide the information directly, or contract with an appropriate entity to facilitate their provision of the information. Costs must be paid for from cash funds, gifts, and grants, and no General Funds may be used. The department will not be required to provide the information if sufficient funding isn't available. This amendment requires hospitals and rehabilitation centers to report to the department within 30 days of discharge of any person admitted for the treatment of a brain or head injury. Next, LB759; it was

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introduced by Senator Hudkins. The bill amended by the committee provides that the prescription drugs delivered to a correctional facility or a jail for the administration to a patient at that facility or jail pursuant to a valid prescription but not dispensed or administered to the patient, may be returned to the pharmacist or pharmacy under contract with that facility for relabelling and redispensing to another patient at the facility pursuant to a valid prescription. Exceptions are: one, the decision to accept a return of the drug or device rests solely with the contracting pharmacist or pharmacy; the drug or device must be properly stored and in control of the correctional facility or jail at all times; the drug or device must be in its original and unopened, labeled container dispensed by the pharmacist or pharmacy with a tamper-evidence seal intact and bear the expiration date and calculated expiration date and lot number; and, fourthly, the relabeling and redispensing may not otherwise be prohibited by another law. The Jail Standards Board, in consultation with the Board of Pharmacy, is required to adopt and promulgate rules and regulations to carry out the bill. The amendment provides immunity for persons or entities which exercise reasonable care in accepting, distributing, and dispensing the drugs under the bill. This portion of the amendment has an operative date of December 1, 2008. The third bill is LB796. This was introduced at the request of the Department of Health and Human Services. This bill changes the provisions of the Radiation Control Act. As amended by the committee, the bill creates a new license category of limited computer tomography radiographer. How's that for a mouthful. It permits the licensed medical radiographers to utilize computed tomography. It provides for a licensure of limited CT--computed tomography--radiographers, and provides qualifications for licensure. The amended bill permits the nuclear medicine technologists to perform computed tomography under limited circumstances as prescribed without being licensed under the Medical Radiographer Practice Act. The amendment permits nuclear medicine technology students, as part of their educational program, to apply x-rays to humans using a CT system while under the supervision of a licensed practitioner, medical radiographer, or limited CT radiographer associated with the educational program. This amendment provides for the issuance of a temporary limited CT radiographer license. The amendment makes the technical changes to the radon licensure provisions. We're getting there. The amendment allows an application for a registration under the Radiation Control Act to be either in writing or by electronic means. The amendment raises maximum fees for registration and inspection of the radiation generating equipment from \$70 to \$400. The department is limited in setting the fee to the recovery of actual costs. This amendment requires the department to adopt and promulgate rules and regulations for fingerprinting and conducting a federal criminal background check for persons with unescorted access to certain radionuclides. Number four, LB906, a bill introduced by Senator Pankonin at the request of the Department of Health and Human Services. This bill changes the fees that may be charged by the department for the certification and inspection of laboratories contracting with the department to conduct drinking water analysis. The bill provides for the annual fee to be no more than \$1,800 per laboratory, and an inspection fee of no more than \$3,000 per certification period for each laboratory located in Nebraska. Again, the

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department is limited to setting the fee to the recovery of the actual costs. Lastly, and not least, LB1173. It was introduced by Senator Dierks. This bill, again amended by the committee, permits healthcare professionals accredited under the Uniform Credentialing Act to consult with a licensed veterinarian contracted with and employed by an accredited zoological park or garden to perform collaborative animal healthcare tasks on a zoo animal under the care of the zoo veterinarian, if all tasks are performed under the immediate supervision of this zoo veterinarian. The amendment specifically authorizes such conduct under the Uniform Credentialing Act, and provides that such conduct is not specifically a part of nor a violation of the credentialing person's scope of practice. Mr. Speaker, with this, I would ask the "improvements" of this rather lengthy amendment. Thank you. [LB928 LB738 LB759 LB796 LB906 LB1173]

SPEAKER FLOOD: Thank you, Senator Johnson. Mr. Clerk. [LB928]

ASSISTANT CLERK: Mr. President, Senator Johnson would offer AM2557 to the committee amendments. (Legislative Journal page 1125.) [LB928]

SPEAKER FLOOD: Senator Johnson, you're recognized to open on AM2557. [LB928]

SENATOR JOHNSON: Thank you, Mr. Speaker. And you'll be happy to know that this is a much shorter amendment. AM2557 is by the Nebraska Pharmacists Association to make technical changes to the portions of the amendment containing the provisions in LB759. These are just merely technical changes, and with that I'd ask for their acceptance. Thank you. [LB928 LB759]

SPEAKER FLOOD: Thank you, Senator Johnson. You've heard the opening on AM2557 to AM2435. We now begin discussion. Senator Schimek, you are recognized. [LB928]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. Senator Johnson, I have just a couple of quick, simple questions, I think, that I believe you can answer. [LB928]

SENATOR JOHNSON: Thank you. We'll do our best. [LB928]

SENATOR SCHIMEK: Okay. The computed tomography process; is that what is known as a CAT scan? [LB928]

SENATOR JOHNSON: That's exactly right. [LB928]

SENATOR SCHIMEK: Okay. I thought maybe so. [LB928]

SENATOR JOHNSON: Or another one is CT scan, you'll hear. [LB928]

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SENATOR SCHIMEK: A CT scan. And this provision, this particular bill, is just to allow students, under the supervision of authorized personnel, to perform these, as I understand what you said, and then after 24 months, that ability to perform those computerized tomography scans or whatever you call them, goes away. [LB928]

SENATOR JOHNSON: What we have is the...like most things like this, there are continual improvements in the equipment that is used, so that what may have been taught originally to the CT students, now there may be a place where an injection or a medication, for instance, was given that would not ordinarily have been part of the original training. So it's training in transition, is really what we're accommodating. [LB928]

SENATOR SCHIMEK: Okay. So what I think I just heard is these are people who have already been trained but they are just getting... [LB928]

SENATOR JOHNSON: But the program is... [LB928]

SENATOR SCHIMEK: ...more training. [LB928]

SENATOR JOHNSON: ...is ongoing. [LB928]

SENATOR SCHIMEK: Okay. [LB928]

SENATOR JOHNSON: So it's really adjustments in the educational program at the major institutions that do this. [LB928]

SENATOR SCHIMEK: Okay. Thank you. [LB928]

SPEAKER FLOOD: Thank you, Senator Schimek. There are no other lights on. Senator Johnson, you're recognized to close on AM2557. [LB928]

SENATOR JOHNSON: I would just ask for the acceptance of the amendment to our committee amendment and the amendment itself. Thank you. [LB928]

SPEAKER FLOOD: Thank you, Senator Johnson. You've heard the closing on AM2557. The question before the body is, should this amendment be adopted? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB928]

ASSISTANT CLERK: 26 ayes, 0 nays, on the adoption of Senator Johnson's amendment, Mr. President. [LB928]

SPEAKER FLOOD: Senator Johnson's amendment, AM2557, is adopted. Mr. Clerk.

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[LB928]

ASSISTANT CLERK: Senator Chambers would offer FA250. (Legislative Journal page 1125.) [LB928]

SPEAKER FLOOD: Senator Chambers, you are recognized to open on FA250. [LB928]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, as pointed out in the committee amendment, this Section 32 comprises a bill, LB759. And to make a long story short--you can read this section and see what it consists of--if prescription drugs are not utilized by an inmate for whom they were prescribed in a correctional facility, those drugs can be sent back to the pharmacist, relabeled, redispensed to another inmate, I presume, requiring the same type of prescription. There is language saying that the container must not have been opened, there must be a tamper-proof seal that is intact, and all such things as that. The expiration date must not have been reached. It also takes away liability from anybody in the handling of these drugs from the time they first leave the pharmacist to the time they reach the facility and are returned to the pharmacist, then reissued to another inmate. I am not in favor of what I call slapdash handling of prison inmates. Even those guilty must have their safety protected, and believe it or not, there are innocent people in these jails and prisons. I'm not arguing anything from the standpoint of innocence. Let everybody be as guilty as sin. But when inmates are sentenced to prison, the punishment consists of being deprived of one's freedom, not being subjected to and exposed to risks which are not going to be tolerated in what has been called the free world. This bill was offered to save money for the counties, for the Correctional Services department, and others who may be implicated. I am not in favor of saving money at the possible risk of inmates. They do not comprise a constituency which is respected, which has any political clout. Their interests all must be spoken for by somebody else who has a voice that may be listened to. And in this instance I think it is very unwise policy. If you look at the committee statement on LB759, you will see that when the bill was presented it was opposed by the Nebraska Board of Pharmacy, by the Nebraska Pharmacists Association. I was told that there's been some work done with these groups, but I don't know what the outcome was. Regardless of whether the pharmacists had agreed or not, I'm going to have to oppose Section 32 which comprises LB759, and if that is unsuccessful I'm going to oppose the bill. This is not directed against Senator Hudkins. She had a bill the other day...or she was trying to have something done, and it did not succeed. So I was able to use a little bit of persuasion. That matter was reconsidered, and what she had desired to have achieved was ultimately achieved. So even if Senator Pirsch had brought this, I would be opposing it. (Laugh) And I will tell you all this: I would oppose it with much less conscience, with much less crisis of conscience. Senator Pirsch is the opposite of that little boy in the commercial where his little brothers...this is a long time ago commercial. They're all sitting at the breakfast table, and little Mikey is there, and they say, give it to Mikey; Mikey eats anything. Well, you

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present a good bill to Senator Pirsch, and he's against everything; I mean everything. (Laugh) And what he's not against, he won't vote on when he sees which way the wind is blowing. I've have so much fun watching Senator Pirsch this session. But he has such a deep, modulated voice, he could be a stand-in for Boris Karloff. Smooth. Sounds almost like fine sandpaper being dragged across silk, and amplified. But it's the words that he speaks that causes him and me to be on opposite sides of the fence. Even though Senator Hudkins brought the original bill, I cannot support it. I would never have brought a bill like this myself. Down through the years I've done a lot of work, trying to improve the medical treatment and the delivery of medical care to inmates. I got legislation that made it a felony for anybody...this is a general statement but you'll get the idea...who has an inmate in custody, whether it's the director of a facility, a guard, or somebody on the Parole or Pardons Board, anybody who has sex with an inmate, commits a felony, because an inmate in custody is not free to offer an uncoerced consent. So under the law such a person cannot give legal consent, so even if she or he says the word "yes," that does not excuse that kind of behavior toward an inmate. I had gotten through other legislation that makes it unlawful to use any person in custody, whether a prisoner on probation, parole, in a jail, or the penitentiary, as a snitch, an undercover snitch, by law enforcement. And the way to enforce it is to say that any evidence obtained by using such a person cannot be used in any proceeding whatsoever. So what the state of Nebraska did in conjunction with the U.S. government and under the auspices of the present Supreme Court Justice of the Nebraska Supreme Court, was to circumvent the Nebraska law by taking these people who could not be used as snitches under the Nebraska law, and turning them over to federal authorities. And the present Chief Justice, when he was the U.S. Attorney, helped circumvent the law of Nebraska. So I've tried to get things done, but those who want to circumvent the law, whose job it is to uphold the law, know how to circumvent it. And the present Chief Justice went along with that. While I'm here I'm going to try to stop things such as this from happening, and when I'm not here there is nothing I can do about it. But George Washington, who supposedly cut down the cherry tree and admitted it, is now being supplanted by Senator Chambers, who's going to chop down this Christmas tree. I'd like to ask Senator Johnson a question. [LB928 LB759]

SPEAKER FLOOD: Senator Johnson, will you yield to a question from Senator Chambers? [LB928]

SENATOR JOHNSON: Yes. [LB928]

SENATOR CHAMBERS: Senator Johnson, this is a Christmas tree of your making. True or false? [LB928]

SENATOR JOHNSON: Yes. [LB928]

SENATOR CHAMBERS: I said true or false. [LB928]

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SENATOR JOHNSON: Excuse me. (Laugh) True. [LB928]

SENATOR CHAMBERS: Thank you. If I heard you correctly, and I listened to you, Senator Johnson, you said the Speaker asked you if all the, you said, ornaments--I'll say baubles, bangles, and beads--were polished. And you told him yes. Is that true or false? [LB928]

SENATOR JOHNSON: I think that I said yes...or true, but with the caveat that I thought that they were all polished, and if they were not, why, then we would go from there. [LB928]

SENATOR CHAMBERS: Oh, I didn't hear all that. I didn't...what...and you kind of faded away at the last part. If they're not, then you would do what? [LB928]

SENATOR JOHNSON: Well, then we would work with you to either polish them up or remove them. [LB928]

SENATOR CHAMBERS: I'll tell you what. We're going to have a compromise. You said "polish them up." I will accept your word "polish," and we'll substitute my word "off" for "up." So instead of polishing this up, we'll polish it off. Do you consider that a good compromise? I got...your word has more letters than mine. Mine only has three letters... [LB928]

SPEAKER FLOOD: One minute. [LB928]

SENATOR CHAMBERS: ...and yours has a bunch, so I am accepting your word that has a bunch of letters. Will you accept my word that has only three letters? And we come up with "polish off" instead of "polish up." [LB928]

SENATOR JOHNSON: Well, sir, that's not...we can use that word but it's up to you as to what we do, sir. [LB928]

SENATOR CHAMBERS: I'm going to fight against Section 32. And if I'm not successful in removing Section 32, then I will have to fight against the vehicle of which Section 32 is a part. And I will tell you this: There have been other Christmas trees that have gone across the board, and I have not raised a whimper; I haven't turned a hair. This is in an area that has been of great concern to me every since I've been in the Legislature. [LB928]

SPEAKER FLOOD: Time. [LB928]

SENATOR CHAMBERS: Thank you, Mr. President. [LB928]

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SPEAKER FLOOD: Thank you, Senator Chambers. Moving to discussion of FA250, Senator McDonald, you're recognized. [LB928]

SENATOR McDONALD: Mr. President and members of the body, I'd like to ask Senator Hudkins a question or two. [LB928]

SPEAKER FLOOD: Senator Hudkins, will you yield to a question from Senator McDonald? [LB928]

SENATOR HUDKINS: Yes, I will. [LB928]

SENATOR McDONALD: And I apologize. I was off the floor for a little bit. Could you tell me, basically, what your amendment does? [LB928]

SENATOR HUDKINS: My amendment basically says that in a jail or a corrections facility, if a patient...or an inmate in that facility has been prescribed a drug, and the patient leaves before all of that medication is taken, then that medication, if it is still in its original packaging, has not been tampered with, has been under the control of the said correctional facility, that it could, with the permission of the pharmacy, return that drug back to the pharmacy for relabeling and redispensing to another patient who has also been given that particular medication prescription. [LB928]

SENATOR McDONALD: And that's what I thought that Senator Hudkins meant with her amendment. That bill or that amendment is basically my repository bill, the cancer repository bill I talked about last night, and also the immune suppressant bill that passed a couple of years ago, which allows us to donate them to a repository, and anybody can use them. So it has basically the same guidelines that they cannot be tampered with, they cannot be opened, they're still in their original bottling. And so there absolutely is nothing wrong with the medication, and why not reuse them? We allow the cancer repository medications to be donated, and then others...then our doctors can rescribe those to anyone. And so why should it be any different in our correction facilities? We're able to use those unused medications at a lesser cost, because, let's face it, we've already paid for them once. Why should we throw those out and start over again? I truly support this and I hope you do too, because it is the right thing to do, and there's nothing wrong with these medications, because what ends up happening, is they get thrown out into our waterways and then we drink the water. And as, if you've heard on the news lately, there are contaminants in our water system. So this is a win-win for everyone. I think that it's the right way to go, and I do support this, and I thank you, Carol, for bringing this up. Thank you. [LB928]

SPEAKER FLOOD: Thank you, Senator McDonald. Next to speak is Senator Lathrop. [LB928]

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SENATOR LATHROP: Thank you, Mr. President and colleagues. I join Senator Chambers in expressing concern and supporting this floor amendment to take out Section 32. And I think it's important for people to understand, senators to understand, what it means to put an immunity provision into legislation. Generally, in Nebraska, as in elsewhere across the country, we have rules that relate to civil liability. And what those rules, reduced to their simplest terms, say, is that if you behave unreasonably, then you are subject to liability to the persons you injure. So what does an immunity provision say? An immunity provision says you can behave unreasonably towards another human being, and you're not going to be responsible for your unreasonable or negligent conduct. It promotes carelessness. It does not encourage people to be careful. It encourages them to be less than careful. And we carve out a class of people, and we say to them, you're not going to be able to make a recovery for whatever reason. We see these immunities come along in virtually every model piece of legislation that comes before the Legislature. And I think it's important and I'm taking this opportunity to just share with you that when there is an immunity in a bill, what we are doing is discouraging people from being careful. We are saying, you may mistreat somebody, you may behave unreasonably or negligently towards another person, and there will be no consequences, and the person that you hurt will have to suffer the injuries on their own and without compensation. I am opposed to immunity bills generally; immunity provisions found in legislation. And I support Senator Chambers' FA250 and urge you to do the same. Thank you. [LB928]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Chambers, you are recognized, followed by Senator Gay. Senator Chambers. [LB928]

SENATOR CHAMBERS: Thank you. Mr. President, I think I may...I didn't hear everything Senator McDonald said. I think I may have supported her legislation. Hers didn't involve people who are in prison. It did not involve people who make no decisions about themselves. If they get medicine, they take what is given to them and have no choice. Take it or no medicine. Senator McDonald's bill did not relate to people who have cancer and are in prison. I know there's a general contempt for people if they're locked up, because you say, well, they shouldn't have committed a crime, so they forfeit all rights, and whatever is done to them ought to be done. I was trying to be a nice guy. I'm not going to be nice now. I'm going to kill this bill if I can, or I'm going to keep us on this bill the rest of today and the rest of this session. Now, if Senator Johnson can get 33 votes today, he had better be ready to get however many it takes to get it off Select File. There are too many cavalier positions taken on this floor, and I've helped people in the wrong way. I helped Senator McDonald get some bills that would do something about redistributing money for problem gamblers, and they voted against something that I was trying to do in the constitution that would have made her work unnecessary. And I could have said, see, I told you so; you should have listened to me; and now that the chickens are coming home to roost, now that the dogs are biting you that I warned you

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about, I'm going to let them bite you and I'm going to stop you. But I didn't do it. I care about people, even when they are convicted of a crime. And when you take people who are locked up, and to save money for these counties you're going to say I ought to go along with something like this, you have another think coming. Another thing these people will do in county jails, if somebody has a badly abscessed tooth, that jail will not allow that person to get treatment, saying that if he or she gets the treatment here we have to pay for it. Let them suffer with it. We'll give them a poultice, we'll give them some Tylenol, and then let them take care of it when they get on the outside. And I think that is cruel, I think it is criminal, and I have contempt for a lot of these people who represent these counties. I don't care about the rest of the session. And I told you all that even before you stuck a stake through my death penalty bill, so that's not what this is about. I went after bills while my death penalty bill was still on the front burner, and I didn't back off a single thing, trying to placate some of you all and cajole you into supporting a bill that meant something to me. But since those are the terms you all think in, I don't have any reason to let anything else pass this session. This is an area about which I have been concerned and other people on this floor have not. But when their concerns come up, I help them, because unlike them I can empathize with those who have various problems, even though they're not the constituency that I represent and even though they're not people in my district who make money dealing in those areas by having various organizations and businesses where they give treatment for which they are paid. That's not why I do what I do. But by the eternal--quoting Andrew Jackson--I am going to stand against what LB959...whatever that is...LB928. Younger eyes helped me, including Senator McDonald. If Section 32 stays in Senator Johnson's bill, the whole Christmas tree goes. Senator Johnson is a surgeon. Even though he is in retirement, he still is a surgeon. Senator Johnson may not have had to remove a cancer and maybe he did, but Senator Johnson knows that there are certain growths in the human body which, if allowed to stay there, will kill the entire organism. You have to remove it. You may have to remove a limb. You may have to remove a portion of a person's body in which that person has so much wrapped up in emotionally that she may never be the same if that is done. She chooses whether to be more concerned about appearance or her life. And then most people opt for what old Satan told God: life for life. All that a person has will he give for his life, or her life. [LB928]

SENATOR ERDMAN PRESIDING [LB928]

SENATOR ERDMAN: Time. [LB928]

SENATOR CHAMBERS: So we're talking about the life of that bill. Thank you, Mr. President. [LB928]

SENATOR ERDMAN: Thank you, Senator Chambers. Members, we're discussing FA250. Senator Hudkins, you're recognized to speak. Senator Hudkins, you're recognized to speak. [LB928]

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SENATOR HUDKINS: This has been an electrifying experience today. Thank you, Mr. President and members of the body. You have heard very passionate speeches from Senator Chambers. He doesn't trust law enforcement. He doesn't trust jails. He doesn't trust corrections people. He doesn't trust anybody who is trying to do their job. This amendment would be a cost-savings matter for the counties. You cannot imagine how many medications are prescribed to patients, and then, let's say, the pharmacy prescribes, I don't know, 10...pick a figure...30 days or 10 days...let's go with 10 days...and the inmate is out in 7. There are three pills left. Now, if those pills are 2 cents apiece, the corrections people are going to...I was going to say eat them, but that's not what I want to say...they are going to absorb the cost. There are some other pills that are \$8 and \$10 each. That is a little harder to absorb. We are trying to keep our inmates healthy by giving them medicines that they have been prescribed. We are also trying to look at the cost of the excess medications. Senator Chambers says that he doesn't like any part of this bill. The original amendment, FA249, would have taken out subsection (4) which is the immunity clause. A person who takes reasonable care in dispensing or whatever the rest of the language is would be held...or would be...anyway, they would be found not liable. They would be...right. And Senator Chambers does not like that word "immunity." He did not want the corrections people to have immunity for doing their job to the best of their ability. I was agreeable with that. If he wanted that subsection out of there, I would have supported that. But obviously I'm not happy with the new floor amendment, and so I guess we'll talk about it for just a little bit longer. So thank you, Mr. President. [LB928]

SENATOR ERDMAN: Thank you, Senator Hudkins. Senator Chambers, you are recognized to close on FA250. [LB928]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, Senator Hudkins exaggerated a position of mine. It's not that I don't trust any law enforcement or any of those people. I said I don't trust them when they have people under their control, and I don't. She doesn't either. Why do you think they make cops account for ammunition that they cannot account for? Or turn things in to the evidence room and sign for it? They don't trust them. Why does she have a lock on her door? She doesn't trust her neighbors. Why do banks have vaults that are locked? Why do they have security guards? They don't trust the people in the bank. You think they're going to leave employees in there without the bank's money locked up safe and tight? That's foolish for her to say that. And she says that she's not happy. She's a grown woman. Things are going to happen in life that keep us from being happy. And she's not going to get her way. And maybe if I had a husband, if I were a woman, who was on a county board, and the county is worried about money, maybe I would say something, but I will tell you that I'm married to somebody on the county board and that county board wants to save money through this bill. But I don't play that way, but I will if you give me the opening. Now, there are certain lines that I don't cross in here, but if you all cross them,

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I can cross them better than you can, and I can continue in that direction. And what I have done is overlook other things that were said in the past. And by the way, she gave me a vulgar poem and distributed it, and Bob Van Valkenburg told me he was the one who wrote it for her. And if I had known that, then I would have gone after him. And that's the kind of thing that happens here. If you start it, you better know what you're starting. And I give any time I have left to Senator Johnson. [LB928]

SENATOR ERDMAN: Senator Johnson, you have 2 minutes and 45 seconds. [LB928]

SENATOR JOHNSON: Thank you, Mr. President. When we put our Christmas tree together here, with the various ornaments on it, we really did think that this was done in good faith to expedite the process. The agreement with the people when these different bills were put together, that if there was significant opposition to any of the parts, that if it could not be readily worked out that we would remove that bill from the group. Therefore, I would ask that the body support Senator Chambers' floor amendment to remove this section of our bill so that we can move on and do what we need to do in the rest of this session without further disruption on this particular issue. So I would ask that you put on your green light to remove this section, and then hopefully we can advance the regular amendment and the bill itself. Thank you. [LB928]

SENATOR ERDMAN: Thank you, Senator Johnson and Senator Chambers. Members, you've heard the closing on FA250 to the Health and Human Services Committee amendment. All those in favor vote aye; all those opposed vote nay. Have all members voted who choose to? Have all members voted who choose to? Record please, Mr. Clerk. [LB928]

ASSISTANT CLERK: 26 ayes, 0 nays, on the adoption of Senator Chambers' amendment, Mr. President. [LB928]

SENATOR ERDMAN: The amendment is adopted. [LB928]

ASSISTANT CLERK: Mr. President, I have nothing further pending to the committee amendments. [LB928]

SENATOR ERDMAN: Senator Johnson, as Chair of the Health Committee, you're recognized to close on AM2435. [LB928]

SENATOR JOHNSON: Thank you very much, members. Again, you know, let's look at this as a positive session. We have four very good sections of the bill remaining that need to be passed, and therefore I would ask for your support of AM2435. Thank you. [LB928]

SENATOR ERDMAN: Members, you've heard the closing on the committee

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amendments to LB928. All those in favor vote aye; all those opposed vote nay. Have all members voted who choose to? Record please, Mr. Clerk. [LB928]

ASSISTANT CLERK: 29 ayes, 0 nays, on the adoption of committee amendments, Mr. President. [LB928]

SENATOR ERDMAN: The committee amendments are adopted. Now with discussion on LB928 as amended. Seeing none, Senator Johnson, you're recognized to close. Senator Johnson waives his opportunity to close. The question before the body is, shall LB928 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all members voted who choose to? Record please, Mr. Clerk. [LB928]

ASSISTANT CLERK: 31 ayes, 0 nays, on the advancement of the bill, Mr. President. [LB928]

SENATOR ERDMAN: LB928 does advance. Mr. Clerk, items for the record. [LB928]

ASSISTANT CLERK: Mr. President, your Committee on Enrollment and Review reports LB916, LB965, LB846, and LB846A to Select File, some with committee amendments. (Legislative Journal page 1125.) [LB916 LB965 LB846 LB846A]

SENATOR ERDMAN: Mr. Clerk, next item on the agenda.

ASSISTANT CLERK: Mr. President, the next bill, LB1016, introduced by Senator Lathrop. (Read title.) The bill was read for the first time on January 17 of this year, referred to the Business and Labor Committee. That committee reports the bill to General File with committee amendments. (AM2322, Legislative Journal page 973.) [LB1016]

SENATOR ERDMAN: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB1016. [LB1016]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This is the opportunity for me to open on LB1016, and before I do I'd like to make a couple remarks. This bill will necessarily require that we have a discussion about undocumented workers in Nebraska. And it's not my intention to have a discussion about them in any manner other than in a respectful manner. This bill addresses the consequences of contractors in the construction industry who hire undocumented workers, what it costs the state of Nebraska in tax dollars, and the competitive disadvantage it places the honest contractor in. It is not my intention to grandstand on the issue of immigration nor to attack those who work as undocumented workers, but to address a problem that plagues the state in the construction industry that puts honest contractors at a disadvantage and robs the state of very significant tax and unemployment revenue each

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year. I'd like to begin my discussion by explaining the practice that LB1016 addresses, and that is the misclassification of employees. The misclassification of employees in the labor market, and particularly in the construction industry, is the tool of the unscrupulous contractor who would use the misclassification of employees to hire undocumented workers, to use these workers to obtain a competitive advantage against honest employers, and this is how it is done. Contractor A hires undocumented workers, but he can't comply with the law and still make them employees, so the practice requires that he refer to all of these people who are literally employees as independent contractors. The consequence of misclassification of employees as independent contractors is twofold. First, as it relates to the state of Nebraska, these 1099 employees, as they're often referred to, these misclassified independent contractors, don't pay their income tax. There is no unemployment compensation benefits paid to the state of Nebraska. And as a consequence, this practice is robbing the state of Nebraska of revenue. The income tax lost to the state of Nebraska exceeds a million dollars a year. Likewise, the money lost to the Unemployment Compensation Fund is also upwards of a million dollars a year. Those revenues that are lost because employers, unscrupulous employers, use this independent contractor fiction to hire undocumented workers is picked up by the rest of the taxpayers of the state, and by the honest businesses whose unemployment compensation rate is increased to compensate for those who do not provide unemployment compensation benefits or payments to the state of Nebraska. The second consequence from the misclassification of employees comes from the competitive disadvantage the honest contractor is placed in. Senator Rogert has passed around a letter from Falewitch Construction Services. Falewitch is a concern situated in La Vista, and one of its...Jim Steele from Falewitch testified at the Business and Labor Committee hearing on this bill. And what I can tell you is you can see, by reading this, by reviewing this, it will only take you a second, see the competitive disadvantage an honest contractor is placed in when they try to compete with a dishonest contractor who calls all of his employees independent contractors. Look at the difference in the cost and the competitive disadvantage the honest contractor is placed in. They do not pay FICA; they do not pay unemployment; they do not pay insurance. And you can see in the testimony that we had was generally that the unscrupulous contractor who calls his employees independent contractors saves about 30 percent in labor costs versus the contractor who does it the right way--the honest contractor. The idea for this bill came to me as a consequence of a conversation I had with a cement contractor up in Omaha. He had bid on a public employment job, a job with the city of Omaha, and he came up, he said, about 30 percent short in his bid. And what he found out was that he was competing with a contractor who was labeling his employees, independent contractors, who was hiring undocumented workers and not paying them correctly. That has to stop if we are going to allow the honest contractor in this state to compete. LB1016 addresses that, and it addresses it in a very straightforward and cost-effective manner, and this is how it's done. LB1016 identifies who is truly an independent contractor. In the construction industry, which is what this bill addresses, you are an employee unless the criteria in the bill are met. Those criteria come to us by way of...they are in almost

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any standard of determining who's an employee or an independent contractor, these criteria are universally found. They are the simple and the straightforward, and they are the following five. To be an independent contractor you need to be free from the control or direction over the performance of the service; (b) you have to be engaged in an independently established trade; (c) your services have to be available to the general public; (d) you have to furnish, where appropriate, your own tools and equipment; and finally, (e) the contractor does not represent the individual as an employee. Those are criteria that are universally accepted as indicia of an independent contractor. If you have someone who is properly or should be required to be classified as an employee, it is against the law under this bill to classify them as an independent contractor. The enforcement mechanism I'd like to address because it is not unique but not something you see everyday either. The bill will be enforced by a private cause of action. Any one of the following three people can bring a cause of action against an employer who has misclassified an employee, and they are what we refer to in the bill as the interested parties: first, the Department of Revenue; second, the Department of Labor; and third is the misclassified employee. Is this unique? No, it is not. This is generally referred to as the private cause of action or the private attorney general approach to enforcement of laws. We have it in the Wage Payment and Collection Act of Nebraska statute. We have it in the fair labor federal statute which permits the employee to bring a claim for overtime hours, in addition to the federal agencies. So the enforcement mechanism, by providing for the cause of action, private cause of action, results in absolutely no fiscal note. It will not cost the state anything to enforce this, and it will permit employers to...or employees who have been mistreated by the misclassification, to bring a cause of action against their employer. [LB1016]

SENATOR ERDMAN: One minute. [LB1016]

SENATOR LATHROP: The second portion of the bill also addresses another practice with respect to undocumented workers and using them in public contracts. The second portion and what will become the second division of this bill requires that contractors who contract for construction work with the state of Nebraska or political subdivisions are required to do two things. One thing, two elements. They are required to submit an affidavit by each contractor or subcontractor attesting to the fact that the employees are properly classified and that each employee has provided the proper documentation of their legal status. They've completed a I-9. I would encourage your support of LB1016 and I look forward to your questions and comments. Thank you. [LB1016]

SENATOR ERDMAN: Members, you've heard the opening on LB1016. Senator Cornett, as Chair of the Business and Labor Committee, you are recognized to open on AM2322. [LB1016]

SENATOR CORNETT: Thank you, Mr. President and members of the body. AM2322 is the committee amendment to LB1016. This amendment is a white copy of the bill, so if

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adopted would become the bill. The committee amendment makes several changes to the original bill. First, the amendment would change the name of the act to the Contractor Employee Classification and Public Contract Duty Act. Second, it would make the act apply only to construction contractors. For continuity and clarity, we have used the same definition of construction which was found in the Contractor Registration Act at 48-2301. This amendment also provides a safe harbor provision whereby an employer can safely assume that an individual being hired is, in fact, an independent contractor. In order to meet the requirements of the safe harbor provision, an individual needs to be registered under the Contractor Registration Act, to have a combined tax rate to indicate they are paying unemployment tax, and to be registered with the Department of Revenue. If you as an employer...if you as an employer can safely and correctly assume that a person you are hiring is an independent contractor if those three provisions are met. We have also removed the ability for interested parties to file a class action suit against an employer who has falsely classified an employee as an independent contractor. Last but not least, the bill now with the amendment would impose penalties for contractors who hire undocumented workers and knowingly provide a false statement regarding their worker status as a citizen. The amendment would reduce the penalties imposed for providing a false statement. On the first offense, a contractor would be subject to the penalties for perjury, and on the second or subsequent offense the contractor would be prohibited for contracting with the state or any political subdivision for a period of three years. I'd like to thank Senator Lathrop for his leadership and hard work on this bill and on the committee amendments. And in the time remaining I'd like to yield to Senator Lathrop. [LB1016]

SENATOR ERDMAN: Senator Lathrop, you have 8 minutes. [LB1016]

SENATOR LATHROP: Thank you, Senator Cornett, and I appreciate your remarks on the committee amendment. Senator Cornett is exactly right; the amendment becomes the bill. And so as you're trying to get up to speed on it, you need only read the committee amendment. Colleagues, this bill addresses a very, very difficult issue in the construction industry, and across the economy generally, and it's important. We learned in the Business and Labor Committee hearing on this bill that the use and misclassification of employees is becoming more and more and broader and broader of a problem. It is very significant in the construction industry, and it is problematic for two reasons. When we misclassify and we permit an unscrupulous contractor to misclassify, the people he pays are not paying their taxes. They're not covered by work comp. They're not covered and have no unemployment benefits. And obviously they have no health insurance. So these people are not contributing anything back to the state of Nebraska. Those who are...and I will quickly add that it's not exclusively the problem of the undocumented worker, but it is a tool of those who would employ undocumented workers. And when these people who have worked as 1099 employees go to the doctor, when they go to the hospital, they don't have any way to pay for it. Most of them are working below the prevailing rate for the work that they do. They go into the

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hospital. If they can't pay the bill, we all pay the bill with an increase in our health insurance costs. When they don't pay taxes, we all have to pay more taxes because they are not. And when these employers pay no unemployment benefits, the rest of the employers, those people who play by the rules in running their business in the state, pay more in unemployment withholding because there are those who work in what is essentially a black market economy where they...or an underground economy where they contribute nothing to the cost of running the state, to the cost of running the schools, and it's costing the rest of us. And it places contractors who are honest at a competitive disadvantage. It needs to be corrected and this bill addresses that specifically. Thank you. [LB1016]

SENATOR ERDMAN: Thank you, Senator Lathrop and Senator Cornett. Senator Friend, for what purpose do you rise? [LB1016]

SENATOR FRIEND: Mr. President, I respectfully request that the question be divided. [LB1016]

SENATOR ERDMAN: Would Senator Friend, Senator Cornett, and Senator Lathrop please come to the front of the Chamber? Pursuant to Rule 7.3(e), the committee amendment has separate and distinct propositions, and is divisible. The first division of the committee amendment will be on your Chamber Viewer, will be AM2578. Division one will include Sections 1 through 7 and Section 10 of the original committee amendment. AM2579 is division two, and will include Sections 8 and 9 of the original committee amendment. Both of those divisions are now on your Chamber Viewer. Senator Cornett, as Chair of the Business and Labor Committee, you are recognized to open on the first division of the committee amendment, AM2578. (AM2578 and AM2579, Legislative Journal pages 1126-1129.) [LB1016]

SENATOR CORNETT: Thank you, Mr. President and members of the body. I will go through the first division, basically section by section. The first division has to deal with identification and of what is considered an independent contractor versus an employee. Section 1 basically names the act, Section 2 states that...it's the Contractor Employee Classification and Public Contract Duty Act. Construction has the same meaning in state statute currently at 48-2103. It defines what a contractor is, it defines what an interested party is, and it defines performing services. Section 3 defines what an independent contractor is and sets benchmarks for that independent contractor. An example is an individual has and will continue to be free from control or direction over the performance of service, both under the contract and in fact. The individual is engaged in an independently established trade, occupation, profession, or business. The individual makes performance of services available to the general public. When appropriate, the individual furnishes the tools and equipment necessary to provide services. The contractor does not represent the individual as an employee, to customers. The individual performing...if a person meets these benchmarks, they are

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considered to be an independent contractor. The safe harbor provision of this bill allows the person hiring someone who says they are an independent contractor a hotline. The contractor can call the hotline and verify with the state that if the person who is stating they're an independent contractor is registered with the state under the provisions of LB204, which is the Contractor Registration Act. Section 4 lists the penalties or what construes a violation. A violation of the Contractor Employee Classification and Public Contract Duty Act for contractor to designate an individual as an independent contractor who would properly be classified as an employee. Section 5 lists remedies that are available if someone is listed as an independent contractor who should have been identified as an employee. Under Section 5(1) it discusses what the penalties will be. If someone is labeled incorrectly as an independent contractor instead of an employee, they can be...the contractor can be sued for combined tax rate plus interest, the amount of the state income tax, and the difference between what the employee should have been paid, based on average wages and what they were actually paid. Division 4 of Section 5 spells out penalties if a contractor retaliates against an employee for filing a complaint against this act, and discusses attorneys' fees and costs. Section 6 outlines or makes it illegal to discharge an employee or retaliate against an employee for bringing litigation under this act, and then Section 10 excludes the work comp provisions of this. And that is basically what Sections 1 through 7 and Section 10 does. In summation, Sections 1 through 7 deal with one identifying who is an independent contractor versus an employee, the penalties for labeling someone incorrectly as an independent contractor rather than an employee, and the litigation or the process in litigation that needs to be followed when that occurs, and how the taxes that are recovered will be divided up among the state agencies. And Section 10 excludes work comp. Thank you. [LB1016 LB204]

SENATOR ERDMAN: Thank you, Senator Cornett. Members, you've heard the opening on the first division of the committee amendment to LB1016, AM2578. Those senators wishing to speak are Friend, Schimek, Stuthman, Rogert, Lathrop, Nantkes, Gay. Senator Friend, you're recognized to speak. [LB1016]

SENATOR FRIEND: Thank you, Mr. President, members of the Legislature. I hope at least a good portion of you understand, and I'll say it as many times as you need me to: If I wanted this bill dead, I wouldn't be doing this. If I wanted this bill dead I would have went to Senator Lathrop earlier and said, I'm going to kill your bill, or try. And I don't have that kind of power. It's up to you guys, obviously. If I wanted this bill dead, I wouldn't be doing this. I told him that--I mean it. That aside--and we can delve into that later if you'd like--I agree with what Senator Lathrop said earlier. I wanted to take my portion or what I thought could be control of this issue, because along with him and along with others that have worked with it, because I felt like I wanted control of it, not that any of you couldn't handle it or wouldn't handle it, or wouldn't want to deal with this subject matter, because we all are. I wanted to be involved in it, and I feel very strongly--and I didn't get a chance, a long chance, to talk to Senator Lathrop about

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it--that there is a partition here in this firewall. Now he's going to contend that I am incorrect. Let's have that discussion. It's the reason that I believe that this should have been divided. Let me quickly go through, or give you an explanation, hopefully, of what I mean by that. Senator Cornett did a very good job of breaking down this division. My explanation goes as follows: One of these divisions deals with distinguishing between employee and independent contracting, or an independent contractor, registration or clarification of independent contractors, mandating procedures, or creating a hotline for the Department of Labor to go into verification or certification type of mentality, providing more clarification for independent contractors' certification or verification, creating opportunities for a cause of action against employers, posting notice of workers' rights, those type of items. And one other one I might have forgotten to put that down, but she laid that division out. The second division reads this way, paraphrased: A state or political subdivision entering into a contract for construction shall require that each contractor who performs services submit an affidavit attesting that each individual is a legalized citizen or a legalized worker, and that's the paraphrased part. I'm not a lawyer, but let me tell you something. I spent two years on Judiciary, and I think I learned a little bit. And that's where my logical divide, and that's where my firewall was created. I think we should deal with these two pieces of subject matter differently, at separate times. So I don't know where this discussion is going to go. I can tell you this: The first division that we're dealing with right now deals with six items that relate to incremental...I would say incremental tort reform, contract law,... [LB1016]

SENATOR ERDMAN: One minute. [LB1016]

SENATOR FRIEND: ...contractual obligations, different...changes in definitions for contractors and subcontractors in this state, and the second piece deals with a criminal act, a Class IV felony right now. So there you go. I mean to me, I want to be respectful just like Senator Lathrop about this, and I think that we can divide these up and vote on them based on that subject matter. I hope you all would feel the same way. I suppose we'll talk more. Mr. President, that's all I had at this juncture. [LB1016]

SENATOR ERDMAN: Thank you, Senator Friend. Senator Schimek, you're recognized to speak, followed by Senator Stuthman. [LB1016]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. If I might, I'd like to ask Senator Lathrop a question or two. [LB1016]

SENATOR ERDMAN: Senator Lathrop, would you yield to a question from Senator Schimek? [LB1016]

SENATOR LATHROP: Yes. [LB1016]

SENATOR SCHIMEK: Thank you, Senator Lathrop. I apologize, because I didn't do my

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homework on this bill, and so I need, I really need to study it further. But my first question of you--and I think I know the answer--but my first question of you, does this just apply to undocumented workers? [LB1016]

SENATOR LATHROP: No. It just applies to the construction industry. The difficulty, or what we're trying to address is the misclassification of employees, which is often used or most generally used as a tool for the contractor, the unscrupulous contractor, that would hire undocumented workers to get around the employment laws. [LB1016]

SENATOR SCHIMEK: Okay, then my next question has to do with...I'm not sure I know what the changes are from the green copy to the white copy, but one of the criticisms of the bill that I've been getting from home builders and others is that the third party has the ability to sue for a determination here. And is that true in the committee amendment, or is that taken out in the committee amendment? [LB1016]

SENATOR LATHROP: No, that's there, and it's there on purpose. It's the enforcement mechanism. The difficulty, Senator, and I don't want to chew into your time, but the difficulty is that we know who the 1099 people are. The Department of Revenue knows who's filing 1099s without paying taxes on it, and they don't have enough people to go round these folks up and squeeze the tax out of them. So we provide for a private cause of action, not only among the departments, but the aggrieved, misclassified employee, as an enforcement mechanism. It's called...the theory is the private attorney general theory, and it is used often in employment law. [LB1016]

SENATOR SCHIMEK: Thank you, and I might have more questions for you later, but I don't think I'll have time this time. But I would like to go to Senator Cornett, if I could, to respond. [LB1016]

SENATOR ERDMAN: Senator Cornett, would you yield to questions from Senator Schimek? [LB1016]

SENATOR CORNETT: Yes, I would. [LB1016]

SENATOR ERDMAN: Senator Schimek, you have 2.5 minutes left. [LB1016]

SENATOR SCHIMEK: Thank you. Senator Cornett, would you like to respond also to the question that I asked Senator Lathrop? [LB1016]

SENATOR CORNETT: Yes, I would. When you're looking at a third party being allowed to sue, when you are looking at the undocumented worker issue, these are not people that are going to sue their employer because they have been misclassified and the proper tax is not being withheld. This gives the Department of Revenue the ability to go in and when they see a company that has been hiring people and not having the correct

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documentation in regards to them having filed as an independent contractor, it allows the Department of Revenue to go in and sue the company on behalf of the employee, so that tax can be collected. And when we talk about, in the sections, what the combined tax is and the money that is collected, that money does not go to the employee. That goes back to the state. It is the combined tax rate that that employer should have been paying on unemployment insurance, based on their combined rate. [LB1016]

SENATOR SCHIMEK: Okay, I appreciate that. I think I know...I think I'm understanding a little better what you're trying to do here. Could you also respond to the fact...one of the gentlemen who wrote me--and I actually had quite a few letters on this issue; a lot of them said the same thing--but one of the letters said that this would apply to some of the employees as well as the employer. [LB1016]

SENATOR CORNETT: That would not be correct. The committee amendment specifically lays out what is an independent contractor. If you look at Section 3(1a) through (2b), it's basically the bottom of page 2 and the top and middle of page... [LB1016]

SENATOR SCHIMEK: Okay. [LB1016]

SENATOR CORNETT: ...bottom of page 1 and the top and middle of page 2, it defines what an independent contractor is and specifically lays out benchmarks for that person to meet. The contractor... [LB1016]

SENATOR ERDMAN: Time. [LB1016]

SENATOR SCHIMEK: Thank you. [LB1016]

SENATOR ERDMAN: Thank you, Senator Schimek, Senator Cornett, and Senator Lathrop. Senator Stuthman, you're recognized to speak. [LB1016]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I've been going over this bill, this amendment that will become the bill, and I have some concerns about it. And we have just passed the Contractor Registration Act just a year...I believe it was a year ago when we passed that Contractor Registration Act. Was it this year? Oh. And one of the concerns that I have is in determining, you know, what is an independent contractor. Could I ask Senator Lathrop a couple questions? [LB1016]

SENATOR ERDMAN: Senator Lathrop, would you yield to questions from Senator Stuthman? [LB1016]

SENATOR LATHROP: Yes, I will. [LB1016]

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SENATOR STUTHMAN: Senator Lathrop, does the IRS determine what an independent contractor is? [LB1016]

SENATOR LATHROP: I believe the IRS has a, like a 25-point test for determining what, you know, whether someone is an employee or an independent contractor. [LB1016]

SENATOR STUTHMAN: Okay, so what we're doing right now is, we're adding another five-question test for determining whether that individual is an independent contractor? [LB1016]

SENATOR LATHROP: No, what we...we're not adding five more criteria to the IRS standard. We have our own standard. Believe me, this issue is all over the place. It comes up in income tax, it comes up in work comp. In Nebraska we have a ten-point test on work comp. The reality is, this is probably the simplest five-point test, or the simplest test for determining who is an independent contractor versus an employee that you can possibly create for the construction industry. [LB1016]

SENATOR STUTHMAN: Senator Lathrop, is this just a continuation of trying to get small contractors? We already have the Contractor Registration Act, and now we're having the contractor Employee Classification Act. Is this going to create any more of a bookkeeping nightmare for the small contractor that has three or four people working, that are building homes? [LB1016]

SENATOR LATHROP: No, that's the guy,...I mean, that's the guy we want to make it easier for him to compete. If there's a guy that has three employees, Senator,...now if he has contractors that he hires, they're legitimate contractors, maybe he hires a roofer. That's not an employee. This doesn't make that person an employee. The guy that installs the cabinets, that doesn't make him an employee. What we do is we take the guy that has three employees and we say, now we're going to level the playing field, because that guy across town that you're competing with that has people that he calls independent contractors that he's not paying taxes on, we're going to level the playing field for the honest guy. [LB1016]

SENATOR STUTHMAN: But Senator Lathrop, isn't that...shouldn't that be policed by the fact that we have this Contractor Registration Act, that they're supposed to be paying the taxes to the government, to the state, and everything like that? Isn't that the reason that we did put that in place at that time? [LB1016]

SENATOR LATHROP: Well, not fully. And do I expect that the Department of Labor can do that? I just got a letter from them that they're cutting their staff by 29 percent because of a problem they had over at the Department of Labor that they discovered last week. So I don't have any sense that the people who are misclassifying their employees, that

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is not going to be resolved by the Department of Labor going out and stopping by a homesite or by a road construction and sorting that out. [LB1016]

SENATOR STUTHMAN: Well, maybe we should repeal the Contractor Registration Act and just go with this Proper Employee Classification Act. Would that take care of everything? [LB1016]

SENATOR LATHROP: Well, no. I think they're a complement. I think they're a complement, and they go to...this is a serious problem to the Department of Revenue, and it's a serious problem for the guy who's trying to compete with...and doing it honestly. [LB1016]

SENATOR ERDMAN: One minute. [LB1016]

SENATOR LATHROP: And I think they are two tools that the state can use, that we can put on the books, so that the honest contractor can compete with the guy that wants to hire the undocumented worker and call him a 1099 employee. [LB1016]

SENATOR STUTHMAN: Well, I think...well, thank you, Senator Lathrop. But that was one of the reasons that I did support the Contractor Registration Act, and I had visited with contractors in my local area, and they felt that, you know, that it would make it a lot better for them, because of individuals that were coming in and doing a job and not paying very many wages, very high wages, and then not paying any taxes. That is one of the reasons why I supported that. I have, you know, quite a number of constituents of mine, you know, that are small contractors that have two or three people. What I'm concerned, and I'm trying to get, and I'll hopefully get an answer sometime before this all gets taken care of, is the fact of, you know, how much more of a bookkeeping... [LB1016]

SENATOR ERDMAN: Time. [LB1016]

SENATOR STUTHMAN: Thank you. [LB1016]

SENATOR ERDMAN: Thank you, Senator Stuthman. Mr. Clerk, items for the record. [LB1016]

ASSISTANT CLERK: Mr. President, two new bills, LB928A by Senator Johnson. (Read title.) And LB308A by Senator Stuthman. (Read title. Legislative Journal page 1129.) [LB1016 LB928A LB308A]

SENATOR ERDMAN: Thank you, Mr. Clerk. Pursuant to the agenda, as set by the Speaker, it is close to 5 p.m., and we will begin with Select File, 2008 Committee Priority bill, LB988. Mr. Clerk. [LB988]

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ASSISTANT CLERK: Mr. President, the first item is Enrollment and Review amendments. (ER8211, Legislative Journal page 1069.) [LB988]

SENATOR ERDMAN: Senator McGill, for a motion. [LB988]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB988]

SENATOR ERDMAN: Members, the question is, shall the amendments be adopted? All those in favor say aye. All those opposed, nay. The amendments are adopted. Mr. Clerk, next motion. [LB988]

ASSISTANT CLERK: Mr. President, the first amendment is offered by Senator Raikes, AM2410. I have a note to withdraw this amendment and substitute AM2545. (Legislative Journal page 1129.) [LB988]

SENATOR ERDMAN: So ordered. [LB988]

ASSISTANT CLERK: Senator Raikes, I have AM2545. [LB988]

SENATOR ERDMAN: Senator Raikes, you're recognized to open on AM2545. [LB988]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. I'm going to begin this introduction with a bit of an overview, at least of the first three amendments. And the first one that we're on right now is a technical amendment. There is one change that could be described as substantive, because it is a change in a budget limit, but other than that, it is technical and clarifying information. The second amendment, and I apologize for burying you again in paper, but you have a set of three printouts that are green. The second amendment we'll get to in a moment corresponds to those green handouts. That is the set of handouts that detail inclusion of a stabilization for state aid in the LB988 proposal, and we'll talk about that a little bit more as we get there. The third amendment is for the pink...or corresponds to the set of printouts that are pink, and that is an amendment that moves from a...the inclusion of the stabilization, which I'll characterize it quickly, is an \$851 million state aid number. The pink makes additional changes that reduce that state aid amount of \$839 million. So that's a quick overview of where we're going to be headed in our discussion for the next few minutes. Let me go back, then, to AM2545, which is the amendment dealing with technical changes, and you have a handout describing these technical changes in AM2545, which I'll go over with you right now. First, several of them deal with distance education. There is a clarification that the reimbursement that school districts are provided for equipment, they're entitled to that only if they offer distance education, send or receive courses for four consecutive years. Consecutive is somewhat of a technical clarification. There is more clarification regarding how the payment of the distance

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education incentives is made. There is a budget exception included for school districts as they become participants in Network Nebraska. It's described on the handout. After two years 85 percent of the increased costs are included in the need and the budget limit, and for districts that began Network Nebraska in 2007-2008, the exception would only be for 2008-2009. Those are consistent with both the budgeting needs, we believe, of school districts and also with the LB988 proposal, as far as how budget limits are calculated. There's a second set of...and the rest of them really are pretty much technical. A second group deals with summer school, teacher education, student growth, and new schools. There's some items regarding calculation of summer school student units, clarification for the teacher education adjustment, that you have in the needs calculation. There's also some clarification about student growth and new school adjustments that are, again, a part of the LB988 proposal. There's needs stabilization and comparison groups. There's one that I'll mention quickly for needs stabilization on reorganized school districts. They would have needs from the prior year attributed proportionately, according to transfers of adjusted valuation. This is definitely a detail, but maybe is indicative of the kinds of things you need to pay attention to. We have, as you know, in LB988, a needs stabilization. Well, if you're going to stabilize needs, it's very important that the needs on which you stabilize are consistent from school district to school district, so you have to take into account situations in which there's been a merger from one year to the next. Some additional provisions regarding budget limits, making sure that they harmonize with respect to different classes of school districts. Another point that I think is worth mentioning, recertification. Recertification is a part of LB988, as you know. We are changing the recertification so that it is 15 days after the effective date of the act, but not before, I think, April 30, is the way it is changed as far as this amendment is concerned. There's also some additional harmonization provisions that are described in that last section, but again, the substantive section I would mention is the budget exception or the budget...yes, the limit to the budget exception for distance education, particularly for...well, for more than distance education. It's for the cost of participation in Network Nebraska, as school districts become a part of that network. So those are the technical changes. If you have questions, why, please raise them. I would ask your support for this. Thank you. [LB988]

SENATOR ERDMAN: Thank you, Senator Raikes. Members, you've heard the opening on AM2545 to LB988. Senator Kopplin, you're recognized to speak. [LB988]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I really don't even know what to say. Just a few short weeks ago we certified state aid to public schools in this state, based upon what we said last year, that we want you to do this, and we will pay for it. Then we find out, oh, we have a budget deficit, and never mind, never mind that we gave millions to incentive for business, and we're giving millions to roads. But we have to take that budget deficit out of education. The second certification--everybody went down. A few people fought on the floor about it. But for most people they said yeah, it was fair. It went across the board. But you know what? It

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was still \$10 million short, so the powers that be in this state and in this body said no, you take another \$11 million out of state aid, and you just screwed a bunch of schools over! I don't really know what to say except this: I've been very cooperative this year. I went along with everything. I was set to vote for LB988. I do not know where I stand at this moment. At this moment, you're going to have to convince me again that in this pile, this mound of paper that we could have a wiener roast with there's so much, that you guys have all studied everything, that you understand what we're going to vote on in LB988 tonight, and if you can, then I stand--I will be there with you. But if you cannot tell me that you understand what's going on or where you're going or why the powers that be in this state are saying, we're spending too much on education, you've got to cut--never mind that we could have taken it out of reserve. Oh, but we have to save that for a rainy day. People, it's raining cats and dogs on some of our schools! And we don't have the intestinal fortitude to stand up and say, this is wrong. Well, I am telling you right now, this is wrong. Convince me that I'm wrong, and I will change to be with you. Thank you. [LB988]

SENATOR ERDMAN: Thank you, Senator Kopplin. Senator Dubas, you're recognized, followed by Senator Wallman. [LB988]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I couldn't agree with Senator Kopplin more, except I know where I stand on this bill, and I oppose it. This bill is a wolf in sheep's clothing. This bill is a back-door attempt at forced consolidation. There are schools across this state that are taking hits, that have done nothing wrong except land on the wrong side of a magical number that defines them as efficient. Our constitution establishes the importance of a public education for all students, and it doesn't say where they live--it just says for all students. That was one of the first priorities of our forefathers when they established a community. They established a school because they understood the importance of a well-educated populous. If for one single moment I thought that this formula would save the money and would do the things that we're being told that it's going to do, that it's a model of efficiency, I could at least give it consideration, and I could at least go back to my constituents and say, this is why we did what we did. I don't have a problem voting one way or another, if I can go back home and look my constituents in the eye and give them a reason why I did what I did. But as Senator Kopplin said, I can't even wrap my brain around this yet. I can't understand the formula, so I can't justify my vote. You know, how can I ask my constituents to have confidence in what I'm doing if I can't even explain what it is that I'm doing. So as I said, I could at least give this some consideration if I thought it was going to do what it says it's going to do. But I don't see that it will. What happens when that number, that 390 students is no longer deemed logical? What's the next step? What's the next level of student population that we look at to qualify you as an efficient model of education? To the very core of my being I disagree with this bill and what this bill will do to some of the school districts across the state. And it's not just because I have some districts that are losers and are big losers in this formula, because a lot of

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my districts are going to do okay in this first round, anyway. But I disagree with the significant...but I disagree with this because the overarching policy direction that I think we're taking when it comes to state aid to education. I understand what we need to do as a body. I understand that we need to find a sustainable way to provide funding for our schools. I just don't understand why it is that there have to be losers, and why we're having to look at balancing our state budget on the backs of our children. It's just fundamentally wrong to me. I just can't get it. This is a major change to state aid that most of us are still trying to wrap our brains around. There's no telling districts that are...we have districts that are well into their budget process, and now we're asking them to basically go back and start over. I have districts who are at the bare bones. They're doing the best that they can; they're giving their kids a great quality education. Their teachers are working hard. They have no teachers to cut. They have no curriculum to cut. They're giving the kids everything that they need at a bare bones. You want to talk efficiency? Let's go look at those schools and see what they're doing. One of the my school districts has an enrollment increase of 19 students. They spend on average... [LB988]

SENATOR ERDMAN: One minute. [LB988]

SENATOR DUBAS: ...\$1,550 per student less than the state average, and yet their state aid is going to decrease by over \$200,000. They're required to take option students, but yet there seems to be no option component in this formula. It's...well, as I said, I already have my mind made up. I can't support this bill for a variety of reasons that I've listed, and others. And I just ask this body to take the time and ask yourself the question, if I can't understand it, how can I defend it? Thank you. [LB988]

SENATOR ERDMAN: Thank you, Senator Dubas. Senator Wallman, you're recognized, followed by Senator Heidemann. [LB988]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I enjoyed Senator Kopplin, and that's comments, also. It does seem like we always try to balance the budget on the backs of children. It's been that way forever. Norbert Tiemann, when he was governor of this great state, set it up so 45 percent of sales and income tax was supposed to be set aside for education. Some people may disagree with me. Most people aren't as old as I am. But he was a leader, and we have to have some leadership here to make sure we fund education for our children. There shouldn't be any winners and losers, for goodness' sake! We should be all winners. And I had a Lincoln Public School teacher in my office after dinner, talked about special education needs. We have increasing expense, and this school district does a good job in this city of taking special needs children from our surrounding communities. We can be proud of that, but it costs money, folks. It costs money, money, money. So are we going to treat our children as second-class citizens or as first-class citizens? Teacher pay--where's that at? I could ask Senator Kopplin; he could probably tell me the numbers. It's not up

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there with the surrounding states, folks. So what are we doing? I appreciate the Education Committee going to work and working on these issues, but here we are, close to the end, voting on something that should be the most important issue we vote on. So let's think of what we're doing. Thank you, Mr. President. [LB988]

SENATOR ERDMAN: Thank you, Senator Wallman. Those senators wishing to speak on AM2545 are Senators Heidemann, Ashford, and Kopplin. Senator Heidemann. [LB988]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I'm going to be very brief. We're doing a major policy decision, and I was just listening to Senator Kopplin and Senator Dubas, and the only thing I want to stress to the body is, make your vote on the policy issue. Do not make your vote on the fact that we need to balance the budget. There's no doubt that we have fiscal issues in this state, but this is the most major change that we are going to do to TEEOSA in a decade, if not more. Make your decision that it's a good policy decision, and not that we need to balance the budget. I'm not saying that for some reason LB988 doesn't go that we won't be back maybe with something else. I'm not for sure how we would do it. It would still be my intent that we have to balance the budget, and we might come back to K-12 education. I'm not for sure. But because this is such a major policy decision, all I am saying is make your vote, yes or no, on whether you agree with the policy, and not the fact that we need to save money. Thank you. [LB988]

SENATOR ERDMAN: Thank you, Senator Heidemann. Senator Ashford, you're recognized, followed by Senator Kopplin. [LB988]

SENATOR ASHFORD: Thank you, Mr. President. Could I ask Senator Heidemann a question? I just need to get...to understand what you just said. [LB988]

SENATOR ERDMAN: Senator Heidemann, would you yield to a question from Senator Ashford? [LB988]

SENATOR HEIDEMANN: Yes. [LB988]

SENATOR ASHFORD: And in fairness, Senator Heidemann, I'm sure I wasn't listening as clearly as I should. But are you suggesting or saying to us that the decision we're making today is a policy decision? It's not a decision over dollars essentially; is that... [LB988]

SENATOR HEIDEMANN: I believe, because it's such a major policy decision, we really need to make it on the policy. [LB988]

SENATOR ASHFORD: Okay. [LB988]

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SENATOR HEIDEMANN: That's my opinion. [LB988]

SENATOR ASHFORD: And that's a fair comment, and I would agree with you, that I think we are making a policy shift. In my former life here, we made a significant policy shift in LB1059 when we were here in the Legislature, and Senator Schimek will remember that. And it was a significant change in funding, and so we're kind of at that point again. It had an effect on funding, but it was really a policy shift at that time, and then the funding kind of trailed with it. So that's essentially what you're suggesting to us, as Chairman of the Appropriations Committee? [LB988]

SENATOR HEIDEMANN: I really believe we...I mean, I've said it two or three times. If this is good policy and if in your heart and your mind, that you think this is good policy, I urge you to vote for this. I might go a little bit further and like Senator Kopplin, if you understand it, but that's a little bit tougher to do. [LB988]

SENATOR ASHFORD: Well, I know you've said that before. That's understandable, Senator Heidemann. It's not...Senator Kopplin does understand it. I don't particularly, as much as Senator Kopplin does, but I agree with Senator Heidemann. I think this is a policy decision, and I'm going to vote for it. My district, the Westside district, back when we did LB1059, Westside wasn't a beneficiary of LB1059, either. And with the amendments that Senator Raikes has...is suggesting--not only this, but the others--do impact District 66. District 66 has a tradition of three overrides in a row. Their levy reflects, I think, their commitment in District 66 to education, as does every other district in the state, and they deal with it differently. I'm going to vote for this, with...I think what Senator Heidemann is telling me is that if we vote for this bill, that we are implementing a new policy, and that we aren't going to be back here next year or the year after to change the policy again, because I think that...number one, it's way too complicated and way too tedious to do that. But secondarily, I think Senator Kopplin has made this point in the committee over and over again as a superintendent, really, with Senator Adams and others on the committee who really know what they're talking about, that we can't put superintendents and schools boards constantly in a position where they don't know what kind of money they're going to have to run their schools. And Senator Dubas has made that point, as well. If we vote for this and if we phase in, "assumingly" we're going to, with a vote for the amendments that come after this, we're going to be phasing the funding part of this. And I will suggest, as Senator Heidemann has said, that the money in the future to fund these changes, with the understanding that the prior law, the 1999 enactment on the system moving forward,... [LB988]

SENATOR ERDMAN: One minute. [LB988]

SENATOR ASHFORD: ...that that will continue, that we're not going to change that policy, that the state aid formula will act independently of the appropriation process.

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Obviously, the appropriation process is relevant to the dollars we have to spend, but as long as we're going to stay there, that we're going to move on LB988 and we're going to phase in the changes, which I believe is what I'm hearing Senator Heidemann say, and we're not going to change it again, other than to tweak it, and we have something that school districts can rely on, I will vote for this bill. But just like in the case of LB1059, you got to...it's a gut check to do it, because it isn't the kind of funding that we would have had in my district. I think OPS, which is another part of my district, it does relatively better than District 66. But that doesn't really matter. The question is,... [LB988]

SENATOR ERDMAN: Time. [LB988]

SENATOR ASHFORD: ...is this good policy? Thank you, Mr. President. [LB988]

SENATOR ERDMAN: Thank you, Senator Ashford. Senator Kopplin, you're next to speak, followed by Senator Raikes. [LB988]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. First of all, I'd like to acknowledge that Senator Raikes and his staff and the rest of the Education Committee have spent hours and hours of this. I respect them highly for that. They're putting together--not they, I'm part of it--we're putting together the best plan we can, but it doesn't seem to be working. May I ask Senator Raikes a question, please? [LB988]

SENATOR ERDMAN: Senator Raikes, would you yield to a question from Senator Kopplin? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR KOPPLIN: Senator Raikes, is the emergency clause on this bill? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR KOPPLIN: It remains on this bill,... [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR KOPPLIN: ...so that superintendents will know in time to do their budgets exactly what they're going to have? [LB988]

SENATOR RAIKES: I would say even...with the provision in the bill, they would know whether the bill is enacted with an emergency clause or if it's enacted without an emergency clause. [LB988]

SENATOR KOPPLIN: Okay, thank you. I'd like to ask Senator Heidemann a question.

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[LB988]

SENATOR ERDMAN: Senator Heidemann, would you yield to a question from Senator Kopplin? [LB988]

SENATOR HEIDEMANN: Yes. [LB988]

SENATOR KOPPLIN: Senator Heidemann, you made a good point about, we should be deciding this bill based on that it is a policy decision. What is that policy? [LB988]

SENATOR HEIDEMANN: What is that policy? [LB988]

SENATOR KOPPLIN: Yes. [LB988]

SENATOR HEIDEMANN: You're changing from sparse area...this is my quick take on it, from standards--sparse, very sparse--to a cost grouping of five up, five down, throw bottom out, top out, and your need is based off of that formula. [LB988]

SENATOR KOPPLIN: Okay. [LB988]

SENATOR HEIDEMANN: That's what I would call the short version, but... [LB988]

SENATOR KOPPLIN: Okay. [LB988]

SENATOR HEIDEMANN: ...I don't totally understand it either,... [LB988]

SENATOR KOPPLIN: All right. [LB988]

SENATOR HEIDEMANN: ...if that's what you're asking. [LB988]

SENATOR KOPPLIN: That's my point. Neither do I. How can you say that we are making a huge policy decision, when all you have before you are numbers that you look at and say, what is my district going to do? Are we making a policy decision? Are we making a policy decision that says, hey, we are not going to jack with state aid anymore? Or are we making little changes in policy that says, okay, we're going to change how we compare schools? Or are we making a policy decision that we can handle schools better by going to learning community formats? I don't know what policy we're discussing. All I've got is figures. If you understand it as a policy problem, then explain it to me and I'll be with you. If it's strictly on numbers so that we can balance our budget, which is the figures that we have before you, explain it to me and I'll be with you. Thank you. [LB988]

SENATOR ERDMAN: Thank you, Senator Kopplin. Senator Raikes, you're recognized

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to speak, followed by Senator Harms. [LB988]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Several points have been made which probably go beyond the technical amendment we're considering, but that's fine. I think they are points that should be raised. First off, the question about cutting school aid, cutting state aid to schools, which is certainly a serious issue. Keep in mind that under the most drastic of the proposals here, the pink copy, if you will, state aid to schools still increases by roughly 9 percent over the current year. Part of that, to be straight, is temporary aid adjustment being removed, so if you take that out or consider that not a part of the state aid increase, the increase is still 5.5 percent. So be careful in your use of the word or understanding of the word "cut." Aid to school districts is being increased, and it's being increased rather than...\$132 million, at least \$70 million in total. Another point was made about forced consolidation. That one just leaves me totally surprised. This proposal, as far as state aid to schools, is much more accommodating of small, standard school districts than the current formula. If you were going argue something about forced consolidation, I think the argument would be that this puts schools districts that may be financially forced into consolidation under the current formula in a much better position to avoid that, particularly as you go down the road in the longer run. Another point is about policy, good policy. I will tell you that...keep in mind the conversation we had on General File. A big part of the policy discussion here is we remain with an equalization formula, we remain with a lot of the procedures that we've had in place for a long time. What we're trying to do in the way of policy is more accurately describe the needs, more accurately reflect the resources, and then come up with the corresponding state aid amounts. I believe we're doing that. I believe this is a good policy change. Now as you know, you cannot consider a funding policy without considering the total cost, and we're doing that, too. But to say that because you have to keep the cost of a policy sustainable within the means of the state as you go forward, that that makes it a bad policy, I would strongly disagree with that. You have to keep both the policy components and the cost in mind together. That's what we're doing here. There was also a comment made about recertification, that basically we're disrupting school districts midstream, that they've already got their budgets made, and this would cause all of that work to be thrown away. My view or my understand is that's not the case. In fact, you only have to go back a few years and we didn't certify state aid at all until the first of July. So we have moved that certification date back to accommodate school districts in their budgeting process. I think that's a good thing. I would like and certainly expect that in most years we'd be able to honor that, but there are times when a change is required, and when that happens I think our obligation is to be as straightforward and complete as we can, as quickly as we can. And that's what we're doing with this proposal. So I believe it is a good policy change, and it is one that, depending on what you decide to do about the various amendments that are going to come up, one that is consistent with a sustainable policy financially for the state as we go into the future. Thank you. [LB988]

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SENATOR ERDMAN: Thank you, Senator Raikes. Senator Harms, followed by Senator Dierks. [LB988]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Heidemann, would you yield, please? [LB988]

SENATOR ERDMAN: Senator Heidemann, Senator Harms would like to ask you a question. Will you yield to a question from Senator Harms? [LB988]

SENATOR HEIDEMANN: Yes. [LB988]

SENATOR HARMS: Senator Heidemann, we spent a lot of time in the Appropriations Committee trying to find a solution to a policy decision that needs to be made in regard to our budget. Will you confirm to me, are we removing another \$11 million out of the state aid package than what we originally talked about the last time? [LB988]

SENATOR HEIDEMANN: Underneath the blue, the revised blue on LB988; is that what you're talking about? [LB988]

SENATOR HARMS: Yes, that's what I'm talking about. What is the amount that we're changing from the last time we had this debate? [LB988]

SENATOR HEIDEMANN: From near as I can tell from the revised blue to what I call the pink copy now, there will be \$11 million, \$10 or \$11 million. [LB988]

SENATOR HARMS: Could you help me better understand who made this decision? How did we come to deciding that we were going to take another \$11 million out? Where did it come from? Who was the person, or who are the people that were involved in this process? [LB988]

SENATOR HEIDEMANN: I think there was people, and myself would be one of them. [LB988]

SENATOR HARMS: Well, explain to me "people." I mean, what I'm trying to get to is, why are we doing this? Who was involved that forced this to take place? [LB988]

SENATOR HEIDEMANN: I...you know, I've had conversations with Senator Raikes, and the conversation being that we're trying to find a way to get to a balanced budget. [LB988]

SENATOR HARMS: Senator Heidemann, I'm not trying to put you on the spot, you understand. I understand what the battle is like, but I'm just trying to come to grips with...I mean, why are we stimulated, all of a sudden, to redo this? I'll tell you what. I've

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been in education almost my entire life. This is the first time I've strayed away from it. Sometimes I'm beginning to wonder why I strayed. My point here is, you cannot take something that is as important as this educational system is in this great state, and one of the largest...and one of the most important decisions we are going to make and the biggest changes we've made in state aid in a decade, lay this on my desk an hour before we're going to discuss this, and expect me to wrap my mind around this? It's crazy! It's very difficult to do, and I live in education and I have lived with formulas, but for me to try to pick up on this when we're listening to another debate, put this at the end of a session that makes a long day out of it, and say we're going to debate this? What's wrong with what we're doing here, colleagues? This is not right. I'm not picking on Senator Raikes; I'm not picking on Senator Heidemann. I'm just telling you that this process is not good, and I know, as I look around here, that many of you have the same concerns I have. I mean, I'm really kind of offended by this. I don't think that we should push things like this to the end and make these kind of decisions at the end. I don't think it's right, and I don't think it's right to ask us to make policy decisions, quite frankly, when you just get the data before you. I'd like to have the opportunity to look at this. I'd like to have the opportunity to talk to my colleagues. I'd like to have the opportunity to call home and say, hey, what are your thoughts about this? But you're going to force us to make a decision tonight, where we haven't even had a chance to digest this? I think this is wrong. [LB988]

SENATOR SCHIMEK PRESIDING [LB988]

SENATOR SCHIMEK: One minute. [LB988]

SENATOR HARMS: I don't mind dealing with the issues. I don't mind addressing them. I don't mind making the hard decisions. But it's got to be done in the appropriate manner; it's got to be done in a manner that we feel comfortable about. I mean, how many of you as colleagues, how many of you can understand this? How many of you really, truly can go home and say to your constituents, I understand this funding formula? When I go home, they don't even understand it. And I will tell you this: We'll be back again, don't kid yourself, on this funding formula. We'll be back again; we'll be making changes, then we'll be fine-tuning it. I think we have to have some time to do this, and quite frankly, I once heard one of my colleagues say, maybe you ought to run this thing parallel for a year to find out what the heck it does, because we really don't know. I guess I think it's wrong, and I'm going to listen to this very carefully. I don't know if I'm going to vote for this. In fact, I don't even know if I'm going to continue to battle this. [LB988]

SENATOR SCHIMEK: Time. [LB988]

SENATOR HARMS: I've got a lot of questions. Time? [LB988]

SENATOR SCHIMEK: Yes, sir. [LB988]

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SENATOR HARMS: Oh. Thank you very much, Madam Chairman. [LB988]

SENATOR SCHIMEK: Thank you very much, Senator Harms and Senator Heidemann. Senator Dierks, your light is next. [LB988]

SENATOR DIERKS: Thank you, Madam President. Members of the Legislature, I don't know if I have a total correct figure here, but I think this is the fourth time that I've been through a major financial change in our educational formula, and every time, we have this same problem. And I remember when we went through LB1059. The bill was passed and we were out of the legislative session for two weeks before we had the final figures, because it took the Education Department that long to tell us what we did as a Legislature. Now that doesn't make sense to me. It didn't then, and it still doesn't today. And I agree with Senator Harms, that this is a difficult issue, and we should have it laid out to us in a more readable form. I'd like to ask Senator....is Senator Heidemann still here? [LB988]

SENATOR SCHIMEK: Senator Heidemann, would you respond to some questions, or a question from Senator Dierks? [LB988]

SENATOR HEIDEMANN: Yes. [LB988]

SENATOR DIERKS: Senator Heidemann, you said something, when you were talking a little bit ago, about voting for the policy rather than for the funding or the financial stuff. I guess that I'd like to have you kind of tell me a little bit about what you think some of these policy changes are. I'd like to get my hand around that, to begin with. [LB988]

SENATOR HEIDEMANN: Well, I tried to say it before, and I can't remember who was talking to me, but we are...we went...years back, and it was before I got in the Legislature, to tier assist, and to sparse, very sparse, and the standard cost grouping. And this will do away with that and go to a grouping system with five schools up and five schools down. There's other things that are involved in LB988, but that, to me, probably is the most major policy change in it. And that's the most major policy change that I see in it. [LB988]

SENATOR DIERKS: So if you were going to follow your own advice and vote on the policy change, which of those policies did you just tell me you would support, and which would you change? [LB988]

SENATOR HEIDEMANN: You know, Senator Dierks, I'll be right honest with you: If I knew everything that LB988 did and I would be more comfortable with it, I might vote for it, because it might be one of the most...best policy decisions that this state has seen for years. My problem with it is I don't know that, and we're either going to find out, if we go

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ahead, that you know, it is a very good policy decision--this is the very best thing that we've ever done--or we might have to go back and fix it. And I'm not comfortable probably moving LB988 ahead. That's just myself saying that, because I don't know how it is going to play out. [LB988]

SENATOR DIERKS: Thank you. I don't mean to be rude or picking on you. I just have these questions in my own mind, and I recall that...I'm not sure what the year was or what the number of the bill was, but I recall when sparse and very sparse became part of our language in here. And as I recall, I was doing a little filibuster on the school finance bill, and I called it a school reorganization bill, because that's what it was going to do, and that's what it did do. But I was having difficulty with that thing, and so one day they brought an amendment in that set up sparse schools. Well, that solved some problems for some people on the floor, so I lost some of my support for the filibuster. [LB988]

SENATOR SCHIMEK: One minute. [LB988]

SENATOR DIERKS: A few days later they came in with another one and set up the very sparse schools, and that took away the rest of them. So where I had 19 people on my side to begin with, we ended up with 9 that voted against the bill. And that's the way that the stuff was structured. They brought these amendments to gain support for the legislation, which was not good legislation to begin with, and I still don't think it was good legislation. And I'm having a lot of concerns about this legislation. I didn't support it on General File; I don't intend to support it on Select File until somebody tells me what the policy changes are that we're looking at, and exactly how they're going to affect my school district, and what the funding is that has the same effect. Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senators Dierks and Heidemann. Senator Adams, you are recognized to speak. [LB988]

SENATOR ADAMS: Thank you, Madam President. Members of the body, I support LB988. That probably comes as no surprise to you. I can't stand here and tell you everything that's in it, I can't walk up to everyone of you and tell you, this is how this particular element is going to affect your school. I can't do that. But I would tell you this: I felt like the whole time we were working on LB988 in committee, what we were trying to do was this, and if I sound too elementary or too simpleminded, I'll sit down in a hurry. What we were trying to do is to clarify and to hone down and to get a more realistic picture of what it truly costs to educate a student in the K-12 system in Nebraska. And we have a state with a great deal of disparity from one end of it to the other. If everybody was alike, if every school district was alike, oh, how simple it would be! But it isn't like that. And we're constantly trying to trim this down so that we get an accurate picture. We're constantly trying to cut out the distortions. We're constantly trying to

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accommodate the differences. That's what this formula is all about. Is it complicated? Unquestionably it is. What if we made it simpler? What if we just said, let's just take an appropriation to divide it X number of dollars per kid and send it out. Boy, that would make our lives in here a lot easier, wouldn't it? Never mind that we may have some constitutional issues, and never mind that I believe within a matter of years we'd have a formula that looks very much like it does right now, because we would constantly be listening to folks, school boards, superintendents, organizations, senators saying, yeah, but I have a unique situation. I have a unique situation because of distance. I have a unique situation because of my student population. I have a unique situation because of land value. The list goes on and on. And as we accommodate those differences, we have a formula that looks as it does. Now I'm frustrated today. I'm frustrated, not because of all the spreadsheets. Guess what would happen if we had not produced those spreadsheets! There would be more clamor on this floor than there is right now, and I can read it all now. I can't tell what's going to happen to my school. Somebody has got to tell me what the numbers are. Well, here are the numbers. Now you can say, I just got these spreadsheets. Yep. Because of two reasons: One, between General and Select there was an understanding that we were going to work on some stabilization to offset the hit, and we did that; and number two, because we got a last minute call to say, find another \$11 million, and we did it. So you get spreadsheets at the last minute. But I'm not frustrated with spreadsheets. I'm not frustrated with your questions--I can't answer them all for you, but I'll try. I have a lot of questions myself. That doesn't frustrate me. You know what really frustrates me? We've gone from an aid package of \$132 million, folks; when you look at the pink sheet, we're down to \$71 million. That's what frustrates me. [LB988]

SENATOR SCHIMEK: One minute. [LB988]

SENATOR ADAMS: A pretty significant hit. What I think we need as much as anything else is not only the principles that are in LB988, we need a calm period. We need a period of predictability for Senator Heidemann and the Appropriations Committee, we need a period of predictability for superintendents, we need a cooling-off period. But we first of all need to implement what is in LB988. Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senator Adams. Senator Heidemann will be next to speak, followed by Senators Flood, Christensen, Avery, Dierks, and others. Senator Heidemann. [LB988]

SENATOR HEIDEMANN: Thank you, Madam President, fellow members of the body. It was asked...the question, whose decision was it to try to address...access another \$11 million. I'm going to put the thought that there was a discussion to try to access it, and it will be the Legislature's decision whether we do that or not. Senator Raikes handed out a lot of information to try to inform us what we was all going to do, and one of them is a two-piece piece of paper that says AM2548 to LB988, amendment to reduce total aid. A

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couple of bullet points says, reduces the average adjustment for each qualifying district by 25 percent, reduces allotted income tax rebate by \$20 million, for total aid reductions of \$11.1 million. If you don't like the fact that we're out to save another \$11 million, it is the Legislature's decision whether we do that or not. If you do not like that part of LB988, and you like the rest of LB988, there will be a following amendment, AM2548. I urge you to vote against it. If you like LB988 from that point on, vote for it. If you don't like LB988, do your will. But it will be the Legislature's decision whether they want to access another \$11 million or not, whether it will be a savings of \$61 million or \$50 million. It will be your decision. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Heidemann. Senator Flood, you are recognized to speak. [LB988]

SPEAKER FLOOD: Thank you, Madam President. When you're Speaker, you have the great fortune of hearing from everybody on a daily basis. And a couple weeks ago in my office competing interests came in front of me and one said, from the Education Committee, Senator Raikes said, it is the providence of the Education Committee to craft and devise the formula that funds schools. Very true. On the other side, Senator Heidemann, as Chairman of the Appropriations Committee said, it's our job to make sure the state's money is spent efficiently, and it is our job to make sure, to the extent we can, that we are as balanced as possible on those numbers. I agree with that, too. I made the decision as Speaker not to schedule LB249 in the budget bills, and to let Senator Raikes put together the formula for state aid to schools. And at the time we met in my office, both of them looked at me and said, we have a mutual, shared interest in finding a number and a formula that addresses and recognizes that we do not have infinite state resources, but we also have a duty to do the best job we can for these school districts. And when I saw the green sheet after General File--I'll take responsibility, to a certain extent--I said to Senator Raikes, we still have to be mindful that we don't have infinite resources. What can you do to help us balance this process? Did he like that conversation? Did he relish the thought of making some changes? No. What did he do, though? He found \$11 million in this Select File amendment. He said this is going to be for one year. And you know what I say? Pass this bill, take the \$11 million, balance it out on the green sheet, and then let's let the formula work. Let's let the formula work for a couple of years, because I think there was consensus on what it essentially does on General File. Let's not run into the burning building and change where we put the fire extinguisher every week. Let's let this thing work. Now obviously I have a commitment to do that, and I believe in it. At the same time I also recognize, if the wheels fall off the state revenue bus and we have a \$300 million to \$600 million shortfall, that's a different ball game, and I think everybody in education--in K-12 education, the university, the State Patrol--every state agency recognizes that that is an exigent circumstance. But at the same time, we have people in this Legislature, despite how the numbers come out, despite the process, that care about what we're doing, that care about wanting to balance the interests of resources with the delivery of educational

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services statewide. I'm going to vote for this amendment, I'm going to vote for the bill, I'm going to vote for it on Final. I want to walk away from it next year and let it work. I want to watch this thing develop, and I want to keep a mindful eye on what our resources are. And to that end, I want credit people like Senator Raikes, Senator Heidemann, Senator Gay and others, for caring enough about this process to invest their time in it, have the debate, let the Legislature make a decision. But at the end of the day, we only have so much of the people's money. We're down to \$11 million out of \$830 million. Let's proceed calmly, let's talk about numbers, let's take some of the emotion out of this and get answers, and let's let the Legislature decide. Thank you, Madam President. [LB988 LB249]

SENATOR SCHIMEK: Thank you, Speaker Flood. Senator Christensen, you are next to speak. [LB988]

SENATOR CHRISTENSEN: Thank you, Mrs. President here, get this right, and fellow senators. First of all I want to say thank you for Senator Raikes and Education Committee for working on this. I know it's not easy. I know my districts have been hit hard, and I'm not happy about it. But I will say the amendments do improve it. I am still going to take substantial losses. This is not decreases, but substantial loss in state aid, make no questions about that. And it's frustrating to see money moving away from small schools to urban schools, and to an extent, a lot of that occurs. You know, I can explain again why it is difficult to see that money move away from a rural school. I can tell you, the stimulus of a small town is having its school. Go up and down the district, go out and look at the counties that only have one school left in them. They're dying. Over half of my district has one school per county, and we're even cutting money away from them. I don't know what happens next. I know when a school closes, the town dies. Parents can't let their little kids walk to school, so they tend to move to another town so their kids can walk, or they have to bus them. Adds a lot of complicated situations. But what scares me right now, if we continue cutting the rural schools, do I start putting two classes under one teacher? We just got rid of Class I's. That's where you had multiple classes under one teacher, and that's where my district is heading. I am equally as frustrated as Senator Adams is, how much money we're cutting out of education, which should be one of the most important things to this Legislature, educating our kids and giving them the best opportunity to become entrepreneurs, business owners for our district, for our state. I get very scared in my district. I have one town that's...largest town is not quite 8,000. Second largest town is not quite 2,000. Third largest town is 1,300, and we start pulling the schools out of these, it scares me, folks. If we can't fund education to keep some of this going, we're going to speed up the process of pushing everybody out of the rural area. We've got a stimulus package for ethanol. It's been one of the best things we've done for rural economic development. But even some of the small towns like Madrid in my district, has got an ethanol plant but no school. They haven't seen much increase in population. They have all located where their kids can walk to school. [LB988]

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SENATOR FRIEND PRESIDING [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR CHRISTENSEN: I get very nervous what's going to happen here. Am I going to be down to one school in my district? I'm 8.25 counties large now. I have 13 schools, so you can see I'm about half and half, one per county, some have two. And some of them, like Chase County, Chase County schools, and then Wauneta-Palisade, Wauneta is on the edge of my county; they're joined with another school. It is getting very thin and very difficult, and if we don't fund our education the way it needs to be, we're going to speed up the process of people leaving. We're going to see more on the east end and more going to Denver. People in my area go to Denver; they don't go to Lincoln and Omaha. It's too close. [LB988]

SENATOR FRIEND: Time. [LB988]

SENATOR CHRISTENSEN: Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Christensen. Members of the Legislature, we're discussing AM2545. Senators wishing to speak are Avery, Kopplin, Raikes, Gay, Christensen. Senator Avery, you are recognized. [LB988]

SENATOR AVERY: Thank you, Mr. President. You know, the Education Committee has worked long and hard on this legislation, and I've listened to the debate and frankly, I sympathize with Senator Christensen. I sympathize with Senator Harms and Senator Kopplin. But I have to say that when Senator Harms expresses his frustration with the evolving process, I can understand that, because as a member of the committee, I sometimes get frustrated. But there's some reasons why this has been an evolving process, because we've having to respond to a lot of changing circumstances. We're responding to a lot of different pressures, and we...on General File I heard from Senator Fischer and others about what this is going to do to my district. And so we went to work on trying to find a way to even it out and to give these districts that were being hurt an opportunity to transition, and that was not easy. But I can tell you that it will be better if you pass the three amendments that you will be considering here tonight. The pain will be less, and it will be stretched out over time, at least over a year. We have been asked to respond to a call for more savings. That has prompted some additional work. It is a complicated formula, but it's complicated for a reason, because what constitutes needs are multiple and complex, and what we have tried to do with this bill is to make it more fair, make it fairer for all the districts, and that has meant that some of the districts that have been underfunded now will get more money, and some districts that have been perhaps a little over funded will get less. But we have now an amendment that we'll be considering, I think next, a way to ease the pain. Senator Heidemann talked about the

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need for good policy, and he made a good point. We are...this is about policy, and the policy that we have crafted here, I think is better policy than the formula was prior to this. Senator Kopplin properly made the point that we should not be balancing the budget on the backs of education. But I would point out this: We started out with an increase of 17 percent, and we've now moved that down to 9 percent. Now that's not a cut, although that's what you heard people about it--you're cutting, you're cutting, you're cutting. That is less of an increase that would have been there if we'd left the formula like it was; 9 percent is a generous increase. Now I know that not every district will get 9 percent, but overall, that's the effect. The importance of altering the way we calculate need, I think, cannot be overemphasized. This bill, the underlying bill, LB988, does move toward a more fair calculation of need. We were asked to come up with some savings. We're doing that. It's not easy, and it was not without pain. I believe this is a good bill, I think that you are going to find that if you look at these three amendments that we have, you're going to find that they are good, as well. [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR AVERY: And I urge you to vote for all three. Did you give me...is it time? [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR AVERY: One minute, thank you. I urge you to vote for all three--this one, AM2545, is largely technical in nature, but you'll have two others coming that are not so technical. I urge you to support all three of those and the underlying bill, LB988. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Avery. Senator Kopplin, you are recognized. This is your third time, by the way. [LB988]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I used to think I knew some stuff about fishing. You know, you get up in the morning, you cast out, maybe you hook a little bass or something. I know nothing compared to Senator Adams and Senator Flood. What they're talking to you tonight about--they put that big old night crawler on there, and he threw it out in front of you, and they're reeling it in saying, trust it, trust it, trust it. Wham! I gotcha! (Laughter) No, Senator Adams, you don't have me. I have a great deal of respect for Senator Adams, and we did work extremely hard in committee, and we did work out a great plan. And then the wheels came off because it cost too much. Senator Avery just said, well, it was going to be 17 percent, and we're still giving you 9. What he didn't tell you, it went to 17 percent because we told schools, you have to do this much more. Hey, it works together. You want to reduce funding? Well then, reduce what you ask the schools to do. The Education Committee worked hard. They did a good job, maybe we bantering back and forth, but we did take the job

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seriously, we did a great job. The only reason that we're reacting the way we are tonight is because suddenly the budget was too short. So let's take it out of education, because we gave them 17 percent. We gave them 20 percent more work, but that's okay; 17 percent looks big on paper. Let's take it down. That's what this is about. We can talk about policy, everything we want. You can talk about, let the formula work for a couple years, and everything is going to be fine, and the sun is going to shine, and we're going to reel in bass like you never heard of. Well, get your fill of night crawlers tonight. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Kopplin. Senator Raikes, you are recognized. [LB988]

SENATOR RAIKES: Thank you, Mr. President and members. I am trying to take as constructively as possible the comments by several of you, that there's a lack of understanding of what we're doing here. And believe me, there's absolutely no intent to disguise or confuse or anything else. I understand it is an involved policy, but there's no calculus here. This is a straightforward proposal that has components that I am going to argue are very understandable. To that end, let me suggest this. Grab if you would, please, the green copy that at the left corner begins with the County Number, the System Name, and then the Summer School Allowance. And if you will, the first county that you're going to look at there is Adams County, and the first school district on the first line is Kenesaw Public Schools. Let me remind you of the simple formula, needs minus resources equals aid. This sheet shows for each school district exactly how that needs number is calculated. So if you will, look again at Kenesaw with me. On the summer school allowance Kenesaw does not have a summer school program, so their allowance for summer school is zero. They do have a special receipts allowance, a transportation allowance, and so on. If you get clear over to the fourth column from the right, you come to a heading that says, Model Formula Need. If you add all the numbers to the left of that column, you will come up with that model formula need number. Now we can spend some time, and I think it's important and appropriate, as you wish, to talk about how each of those components are calculated to come up with that total model formula need number. But if you ask the question, how do you come up with needs for each school district, that's the answer. You start with that model need column, you add all the numbers to the left, you come up with model formula need. Now let me just mention that as you look at that number, and Senator Adams, I can remember, pointed this out, not every school district in the state is the same. Very true. So if you look at these columns, several school districts have zeros, where other school districts for the same column have a positive number. So the needs calculation for school districts differ. You have some districts that have a LEP for students learning the English language, have an allowance for LEP. You have others that do not. The same is true for the poverty allowance and so on. So this is how you come up with the needs number for each school district. All right. If you go to another sheet, and this one is, again, a green sheet; has toward the left a column headed Formula Needs. Okay, let's again look at

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Adams and look at Kenesaw Public Schools. Under the formula needs number, you will see that the number calculated on the first sheet you looked at--and again, let me just repeat that; for Kenesaw, it's \$2,349,777.94. [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR RAIKES: You see that number repeated under the formula needs. So we calculated formula needs on the first sheet. Now we're going to the second sheet. We're starting with formula needs. We're looking at resources. The first component of resource is Yield From Local Effort Rate. That's basically the property tax amount that's included in the state aid formula, Net Option Funding, Income Tax Rebate, Other Receipts. You get to, then, Total Resources. If you add everything to the left of total resources except formula needs, you come up with the total resources number. Formula needs in the left column, minus total resources, equals equalization aid; \$2,349,777 minus \$2,275,266... [LB988]

SENATOR FRIEND: Time. [LB988]

SENATOR RAIKES: Ah, so close! Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Senator Gay, you are recognized. [LB988]

SENATOR GAY: I'd yield my time to Senator Raikes. [LB988]

SENATOR FRIEND: Senator Raikes, almost 5 minutes. [LB988]

SENATOR RAIKES: Thank you, Mr. President, and thank you, Senator Gay. So let me, if I may, continue. Formula needs for Kenesaw minus total resources for Kenesaw yields equalization aid of \$74,511.28. Kenesaw, therefore, is an equalized school district. The needs for that school district, as calculated on the first sheet, exceed the resources available to that district so, therefore, they're equalized and they're entitled to equalization aid from the state. That is the commitment, that if needs exceed resources the state will provide state aid to make up the difference. Okay, then let's move on over to the total calculated state aid number. Total calculated state aid, that's the far right number on the same sheet in the right-hand column, equals in this particular case, the Kenesaw case, the sum of equalization aid--again the \$74,511 number, plus the income tax rebate--\$23,018, and the net option funding number. Those three numbers together provide the total calculated state aid available to Kenesaw. Let me then quickly take you to the third set of...the third handout, on the green sheet. This gives you an opportunity to compare for Kenesaw or any other school district how state aid numbers vary and formula needs numbers vary over two school years. On the left-hand column, 2007-2008, calculated state aid for Kenesaw is \$196,408 and so on. The 2008-09

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calculated state aid, this was the number that was certified on February 1, is \$232,880. The calculated state aid for this model, using LB988, is \$283,031.61. At this point, compare that number with the right-hand column number on the sheet you just looked at before. You wanted to know where this calculated state aid number came from. That shows you. The right-hand column is \$283,000. That number is shown here under LB988 calculated state aid. So let's look at differences. Between 2007-08 and 2008-09, which would be the...again, the February 1 certification, state aid to Kenesaw would have gone up by \$36,471. Between what was certified for the current school year and what this model of LB988 would do, the increase is \$86,622. Percentage change relate to those two differences: 2007-08 to the February 1 certification is 18.57 percent; percentage change 2007-08 to LB988 is 44.1 percent. Now on the right half of that same sheet you have what I consider to be, for policy purposes, the more important set of numbers. [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR RAIKES: These numbers deal with formula needs. Formula needs as a policy number is more important to me because that's the total guarantee by the state, so to speak, of funding for that school district. State aid is one component of funding, but the total funding source includes state aid as well as local property tax resources. So you have the same set of comparisons on the right-hand side, \$2 million and a little bit for the current year, \$2.2 million using the February 1 model. This model, \$2,349,000, and again you go back to that very first sheet you looked at and that number will be familiar. Okay? And then finally you've got the differences and you've got the percentage changes for those differences. In the far right column, you've got an indication of the... [LB988]

SENATOR FRIEND: Time. [LB988]

SENATOR RAIKES: Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Members, we are discussing AM2545. Senator Christensen, you're recognized. [LB988]

SENATOR CHRISTENSEN: Thank you, Mr. Speaker. I want to clarify something. You know, Senator Raikes and Senator Avery both have mentioned that there's an increase in total dollars, there's an increase, just not as much. Now I have told you my schools have been cut. Using the same one sheet that Raikes...Senator Raikes was just on, second page, Chase County, 2007-2008, \$760,000; third column, LB988 calculated, \$618,000; loss, a hundred and almost...\$142,000. Wauneta right below them went from \$974,000 down to \$902,000; loss of \$72,000. You flip over to the third piece of paper, Frontier County, Maywood, five hundred and four thousand almost eight hundred, down to \$458,000; a loss of \$46,000; Eustis-Farnam is one of them I have that gained about

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\$57,000; Medicine Valley right under it losing \$63,000, almost \$64,000. Furnas County below them, Arapahoe losing \$84,000; Cambridge losing \$51,000; Southern Valley losing \$136,000. You go over to Hayes County, back of the next page: Hayes Center School losing \$58,000, almost \$59,000. The one below it, Hitchcock, is mine. It's pretty hard to count because it just went through a merger head of this year. They have a loss but I'm not counting it because it's too hard to compare when they had to put schools together. Then you go over again to Perkins County, another one, another one county losing \$127,000. Down to Red Willow: McCook, my second school gaining money, gains \$468,000; but Southwest School, right below them, losing \$106,000. You know, there is a number of schools gaining money. There is. A lot of them don't get what they had, but there is a number of schools taking major hits. Would Senator Raikes yield to a question, please? [LB988]

SENATOR FRIEND: Senator Raikes, will you yield? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR CHRISTENSEN: Senator Raikes, last time we had a major change in state aid formula, was there a study done for a couple years? [LB988]

SENATOR RAIKES: I don't...it depends a little bit...I'm not sure I can answer your question, Senator. We've made a number of changes over the last several years. I don't know if you'd call them major or not. But I would also tell you that, as far as I'm concerned, we study state aid every year. [LB988]

SENATOR CHRISTENSEN: I understand that, and I know there's changes every year, but a lot of my superintendents have shared, you know, last time there was such a shake up like there is this year, they spent two years looking at it and preparing for it. But, you know, in doing something like that, a two-year study, it would allow schools to plan. Is there anything wrong, Senator, with taking an even cut on everybody and studying this plan for a couple years? That would still balance the budget. That would give us time to see the impacts and how it's implemented. [LB988]

SENATOR RAIKES: Senator, actually I would argue that two years is not enough. You need to have a focus on it probably for more than that amount of time, and also I would tell you the best way... [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR RAIKES: ...to look at alternatives is to propose bills, which we have done. And this, the framework of this proposal, which is now LB988, has basically been before the Education Committee, in at least a few occasions before the Legislature, for at least five years. So there is a...there has been, I'll put it that way, an opportunity for familiarity

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with this, and I will add, in addition to that, before we ever began that process we did an around-the-state set of workshops or sessions or whatever you might call it where we had superintendents in to discuss what the issues were they thought should be addressed in a revision of the aid formula. So I think a two-year so-called study and then a result coming out would probably not be quite enough. [LB988]

SENATOR CHRISTENSEN: Okay. Thank you. [LB988]

SENATOR FRIEND: Time. Thank you, Senators. Senator Wightman, you are recognized. [LB988]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I have some questions that I would like to propose to Senator Raikes, if I might. [LB988]

SENATOR FRIEND: Senator Raikes, will you yield to a question from Senator Wightman? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR WIGHTMAN: Senator Raikes, I've been out during part of this time that we've been discussing LB988 and I know you have discussed the areas that you have cut or changed, adjusted since the blue sheet came out, which was I don't know how long ago at this point but a week or ten days ago. And as I understand it, these adjustments came mostly in order to provide some stabilization or hold harmless to the small and sparse and very sparse districts, and then some with regard to the Governor's request of the \$11 million reduction. Is that right? [LB988]

SENATOR RAIKES: Actually, as far as I know, the Governor was never involved. But the first set of factors that you mentioned is correct. Our discussion on General File, you will remember, sort of concluded with an expression of a need to address school districts that lost a substantial amount of state aid. And so there was no focus in particular on sparse or very sparse or standard. It was just simply the amount of state aid that a school district could lose from the current year to next year based on the introduction of this formula should be limited. So that's what we did and those results are presented in the green copy, which we have just been going over. [LB988]

SENATOR WIGHTMAN: But whether it came from the Governor or whoever it came for, you then looked for an additional \$11 million to try to bring your budget or at least your appropriations that would be necessary kind of in line. Is that correct? [LB988]

SENATOR RAIKES: Senator, and again I'll give you my view of that. If you look at the...not the green sheets that we've just been going but the green sheet that comes out with the agenda, there was a box on there which had a minus \$60 million and it was the,

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I guess, interest of several of us that of primary importance is that the Legislature is fiscally responsible in budgetary issues; that in order to address that \$60 million deficit there needed to be an additional, or could be with...at the will of the Legislature, of course, an additional \$60 million, or an additional \$11 million as it turned out, reduction in state aid, so we should at least look at that possibility. We took that as a directive and that directive resulted in the pink sheets that you have before you. [LB988]

SENATOR WIGHTMAN: And then at some point you had to make a decision then as you looked at these cuts that you were trying to make what areas you were going to adjust. Is that correct? [LB988]

SENATOR RAIKES: We did. We did, you're right. [LB988]

SENATOR WIGHTMAN: And one of these was the 10 percent cut that you took on teacher education, is that correct? [LB988]

SENATOR RAIKES: Actually, we reduced...we reduced a factor that's used in the teacher education adjustment from 13.75 percent to 10 percent. [LB988]

SENATOR WIGHTMAN: So that would be more than 10 percent actually. [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR WIGHTMAN: It'd be about a 25 percent reduction. [LB988]

SENATOR RAIKES: Yes. Close to that, yes. [LB988]

SENATOR WIGHTMAN: Okay. Then when you get to setting policy, how do you determine where you're going to cut at a time like this? I guess I have some questions with regard to that. [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR RAIKES: Of course, that's a...it's a very good question and one that we, as you might guess, puzzle over considerably. We, I would say, approach it generally, trying to keep in mind that this is an equalization formula that we try to direct aid to those school districts that are most in need of it. So if there are resources that appear to be available some places, maybe not in excess but in less shortage than in other areas, that is a consideration. But it is complex. You have to consider what factors you consider in the needs formula and so on and so forth. [LB988]

SENATOR WIGHTMAN: I have some other questions, but I think I've got about 5 seconds left so I've turned my light on again. But I will ask you some questions later.

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Thank you, Senator Raikes. Thank you, Mr. President. [LB988]

SENATOR FRIEND: Thank you, Senators. Senator Erdman, you are recognized. [LB988]

SENATOR ERDMAN: Thank you, Mr. President and members of the Legislature. I probably won't use my full time and will yield the rest of it to Senator Raikes when I'm done, but there's a couple realities that you have to realize about writing a state aid formula. It's not different than writing any other law in the state of Nebraska. You can define anything you want to in the law to be anything you want it to be. And so when you get into the conversation about what the needs are in the state aid formula, it's no more than a majority opinion of the Nebraska Legislature at any one time. Hopefully, hopefully, it's based on the best possible understanding of the needs of a school district to be able to provide for the education of the students of Nebraska. But when you go through this process, recognize that all of these categories across this sheet that Senator Raikes has now handed out in green or pink or blue or yellow, whatever color you want, are simply items that a majority of the members of the Legislature at one point, or a majority of the Education Committee, have decided are needs. It's not a fact. It's not a fact until a majority of the members of the Legislature vote on it. And so you have sparse and very sparse districts. Again, that was a decision by a majority of the Legislature to set the aid or the needs side of the formula based on those designations. Same here. The philosophy that I understand of what we're doing here is trying to get a better understanding what the actual needs are and a better ability to allocate resources towards accomplishing those and ensuring that whether those resources come from the state or the local level that it's based on a more accurate understanding of the needs. But again, 25 of us decide what that is. There's not a science. You're not sitting around and going, well, two plus two is four. We know that. Needs of the state aid formula are not calculated that way. They're calculated based on what the collective group of the Legislature decides they are. So that's an important component to this conversation. If you understand how this sheet works, that's great and you should. You should take the time. You should listen to Senator Raikes explain it. But recognize that each one of those categories--summer school allowance, transportation allowance, poverty allowance, LEP allowance, distance ed allowance, elementary site allowance, class size allowance, basic funding allowance, teacher education adjustment, local choice, system averaging--those are simply all decisions that were made by a majority of elected officials in the Nebraska Legislature in their capacity to determine how to fund schools on the needs side. My hope is, my conversations with my school districts is that we get to the point where the needs are actually recognized in the formula, and whether or not they get all the money that they had hoped for or not, that there's stability and there's consistency. And we still have a ways to go tonight before I think we get closer to that, but understand again that those needs are simply determined as we would any other definition of law in any other piece of legislation. Senator Raikes, I will yield you the remainder of time to continue your explanation. [LB988]

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SENATOR FRIEND: Senator Raikes, 1 minute, 45. [LB988]

SENATOR RAIKES: Thank you, Senator Erdman. Thank you, Mr. President, members. I absolutely endorse the comments that Senator Erdman made. That's exactly true. And in our run-through here of the formula, I have sort of described the title or the name of the component, say, of the needs calculation, giving you an amount. I have not told you in detail exactly how that's calculated. Now certainly that's a considerable additional amount of detail and obviously is very important. It is all spelled out. It is not hidden from anybody. It's available. And to the extent that you have questions about any of those, I would urge you forward. Let me go back quickly to Kenesaw, whom we're picking on I guess, in the sheet, the green sheet, that has the comparison of state...calculated state aid and the comparison of formula needs. You will notice over on the right that there's a General Fund levy column and that levy shows that in the most recent year the General Fund levy was...for Kenesaw was \$1.06... [LB988]

SENATOR FRIEND: Thirty seconds. [LB988]

SENATOR RAIKES: ...11. Thank you for that warning. Let me run on down, if you will, to Antelope County, Elgin Public Schools. Look there at .85 is their levy. Whereas Kenesaw was \$1.06, Elgin was .85. Go back quickly to the sheet that shows the resource calculation. Look under Elgin. You will see under minimum levy adjustment... [LB988]

SENATOR FRIEND: Time. [LB988]

SENATOR RAIKES: Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Senator Harms, you're recognized. [LB988]

SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Raikes, do you need any more time? [LB988]

SENATOR RAIKES: I would just...please. [LB988]

SENATOR HARMS: Okay. First of all, I want to say thank you for walking us through that. I think that is helpful for me, and anyone who is listening I think it was helpful. So I want to yield the rest of my time for you so you can kind of finish this up and maybe we can draw this to some kind of conclusion here then. [LB988]

SENATOR FRIEND: Senator Raikes, about 4 minutes and 30 seconds. [LB988]

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SENATOR RAIKES: Thank you, Senator Harms, and thank you, Mr. President. My point was, if you look under Elgin on that, there's a minimum levy adjustment of \$205,320. What that is, is a reduction in the aid...or, well, actually it's an increase in the resource amount for Elgin which amounts to a reduction in the need amount. The philosophy here is this. This is a funding partnership between the state and each individual school district. The obligation of the state is to fill in the aid in the instances where needs minus resources leave an aid amount. On the other hand, if there is not local effort by the school district in terms of their willingness to levy against their own property tax resources, then the philosophy is if you, the local school district, are not willing to pay for your schooling, then we the state aren't either. So Elgin is an example of a school district that levies considerably below 95 cents and certainly below the \$1.05 levy lid. As a result, there is a minimum levy adjustment. So I again point that out because that is a part of the philosophy that we have adopted, as Senator Erdman said, over several years, several different provisions, one or two or three at a time maybe, that direct the way we provide funding to K-12 schools in the state. So I perhaps can stop there. Again, I've tried to give you headings and amounts for the components of need, the components of resource, and then the resulting state aid calculations, comparisons with previous years. You will find, by the way, that this combination of three sets of sheets is duplicated on the pink as well. They are the same three sets of sheets, so you can do the same sort of construction--needs, resources, and state aid comparison--with the green model and also with the pink model. I would be happy to try to answer questions that you may have about any of this. Thank you very much. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Senator Gay, you are recognized. [LB988]

SENATOR GAY: Thank you, Mr. President. I just wanted to say I had one of my friends say, well, you must be getting more money because you seem more pleasant tonight, and just for the record, our district is not. So I'm still not number one on Senator Raikes's list, I don't think. But I think it's important that we try to understand what's going on here and I have three questions for Senator Raikes, if he'd yield to a question. Then I'd yield him my time. [LB988]

SENATOR FRIEND: Senator Raikes, will you yield to a question? [LB988]

SENATOR RAIKES: Yes, I would. And I would point out, Senator Gay, that you are number one on one of my lists. [LB988]

SENATOR GAY: (Laugh) Yeah, I'm sure I am. (Laughter) The questions then for you, thank you: I guess when we look at the resources, I wanted three things. If you could be...as close as you can, thumbnail. But one, when we look at the resources, there's three things and one says, other receipts, income tax rebate, and net option funding. Can you explain each one of those, just encapsulate the best you can within 5 minutes.

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Then I'd yield you the balance of my time. I'm just trying to figure out the resource page. Thank you. [LB988]

SENATOR RAIKES: Thank you, Senator Gay, for the time and I'll try that. Mr. President and members of the Legislature, net option funding is a payment made to school districts that serves students that are not resident students in their school district. If you have a...in fact, it's a net amount of students. If you have some students in your school district that leave and some students that come in, and the balance in your school district is a plus, then net option funding is an amount you get to serve the students that are not residents of your district. So that's the basic idea with net option funding. Income tax rebate dates back to LB1059 in 1990 where the decision was made actually by the voters to increase income tax, provide that money to school districts to help support schools. And I think it's, at the time or at some point in time, the amount of the income tax rebate was fixed at something like \$112 million or something in that range. Right now, it's used two ways. It's used to provide funding for the net option funding amount and it's also then the remainder is distributed to school districts in proportion to the income tax rebate that comes from those districts. Other receipts include several of the receipts that are available to school districts. It includes money that they get from fines, educational lands and funds, receipts that come to school districts for ed lands and funds. Those are maybe the two biggest ones. There are some miscellaneous items, but it's a good question because those components, the other major component of course of resources is yield from local effort rate which is the property...the amount assigned to the property tax resource available in the district. So net option funding, income tax receipts and other...or income tax rebate and other receipts are the remaining components of the resource side. I hope that gives you some explanation of those items. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Senator Christensen, you're recognized and this is your third time to speak on this amendment. [LB988]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Raikes yield to a question, please? [LB988]

SENATOR FRIEND: Senator Raikes, will you yield to a question from Senator Christensen? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR CHRISTENSEN: Senator, would you explain to me why sparsity and very sparsity was put in? [LB988]

SENATOR RAIKES: The idea, Senator, was to reflect the possibilities for mergers of school districts, I think, in very rough terms. The thought...there was recognition that

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there are economies of size in school districts so that if you have the opportunity or if a school district is bigger, the cost per student is lower. Sparse and very sparse was meant to designate school districts that, in an important sense, really didn't have that option or opportunity because of the dispersion of students over a large geographical area. So that's a rough indicator. [LB988]

SENATOR CHRISTENSEN: Okay. Another question. Do you believe that we should take any counties to less than one school per county? [LB988]

SENATOR RAIKES: Well, Senator, of course, that's a question that probably could best, or certainly in addition, be addressed by local residents. I think now we do have...we do have counties that, if you will, have fewer than one school district. You have a school district that covers an entire county and part of another. As far as I know, those situations are working well locally. I haven't heard anyone say, well, gosh, we've got one school district that covers a county and a half; we really need another school district. So I don't know that I would be willing to adhere to one school district per county, if that's your question. [LB988]

SENATOR CHRISTENSEN: Well, I guess my point gets to be when we're taking care of kindergartners through 4th graders or so, it gets difficult sending them out on a bus for two hours to get to school and two hours home. And if we keep the progression we're going of cutting dollars to rural schools, we're going to do that because they're not going to have enough to keep a school going so we're going to have to merge. And again, longer bussing, more hours there, more punishment, which in turn damages, might, little towns' economies out there. And I guess that's what I'm nervous about. And I think there's some need for some sparsity in there because of that. Would you agree that we need to take care of some of this? [LB988]

SENATOR RAIKES: Let me respond a couple of ways. One, you see, looking back at the sheet where the needs components are spelled out, you see an elementary site allowance. That is a new addition to the needs calculation in LB988. The idea I think addresses directly the issue you're raising, namely, particularly for students in the lower grades, you need to avoid or it's good at least to avoid long bus rides. So it may be necessary to have multiple attendance centers even though...at the elementary level, even though there aren't a lot of students to attend those elementary centers. So this is a component that is to recognize a school district serving in a situation where students are dispersed geographically in such a manner that it's really necessary to provide extra elementary sites. [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR CHRISTENSEN: How much does it cover for the cost of the elementary site? [LB988]

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SENATOR RAIKES: Again, that is a...there's some detail in that provision and what is taken into account is the number of grades, the number of grades offered in the elementary site, the number of students offered or served in each grade, and the basic funding allowance I think for the...I don't know if it's the statewide funding allowance. I think it's the statewide basic funding allowance. So you multiply those factors to come up with a total number and, for example, as you may have noticed, for Nebraska Unified District 1 that amounted to a \$506,000 addition to their needs calculation to reflect the cost of those additional elementary sites. And keep in mind now... [LB988]

SENATOR FRIEND: Time. [LB988]

SENATOR RAIKES: Sorry. [LB988]

SENATOR CHRISTENSEN: Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes and Senator Christensen. Members of the Legislature, we are discussing AM2545, proposed amendment to LB988. Senator Wightman, you are recognized. [LB988]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. I would like to continue my conversation and discussion with Senator Raikes, if I might. [LB988]

SENATOR FRIEND: Senator Raikes, will you yield to a question? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR WIGHTMAN: Senator Raikes, when we ran out of time awhile ago, I was discussing various issues with you, but I'd like to discuss with you...I have handed around a sheet that has JW #36 at the top, with some figures that our school district put together and I pointed those out to you, I think, and it compares the total basic funding for each school district in this array. Now this array is only a small fraction of those that appear on the green sheets, but it was done, I think, by some sort of a random selection with everyone that ended in a seven. So there was some reason as to how we came up with this particular array. And I'm looking at Lexington, which is my home school district, and it shows that the basic funding is \$6,804 per student, which appears to be, and I think it's the lowest in the entire...if we had the entire number of school districts, but certainly it's the lowest in this particular array. Do you have that sheet? [LB988]

SENATOR RAIKES: I do, Senator. [LB988]

SENATOR WIGHTMAN: And I'm wondering does this basic funding somehow get involved in the formula that we're applying to arrive at state aid for each school? [LB988]

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SENATOR RAIKES: Yes, it does, absolutely does. If you look on the sheet that shows the compilation of needs, you see right in the middle a basic funding allowance column and that's where that comes in. It's the starting point for the needs calculation. You know, one way to look at it, is you begin there and you add the other components to that basic funding amount. [LB988]

SENATOR WIGHTMAN: Okay. And as you see those that are very high basic funding at the top, I assume those are unequalized districts. Is that correct? [LB988]

SENATOR RAIKES: Well, they are. I think the predominant characteristic is the formula students in the first column. Those are districts that have a small number of formula students. And again keeping in mind that there are economies of size and school districts, as you get school districts that are that small, 107-108 students K-12, the cost per student is going to be relatively high. [LB988]

SENATOR WIGHTMAN: And I probably should point out, if anybody is following along in here, that the fifth item down I think should be Bruning-Davenport but it says Burning-Davenport, so that may be an incorrect designation. Can you explain to me why Lexington would be the lowest on this particular array, and I believe to be the lowest in the entire state? [LB988]

SENATOR RAIKES: Well, exactly why it's lowest, maybe I can't give you a full explanation of that, but I can tell you how that number is arrived at. You take Lexington at 2,732 students and you take five districts smaller in terms of enrollment, five districts larger in terms of enrollment. Take the basic funding for each of those districts, throw out the high, throw out the low, average the rest and that's how you come up with the \$6,804. I'm guessing that Lexington is low compared to other places in the state because that tends to be a size of district, 2,700 students, that at least in Nebraska is a relatively low-cost size grouping. [LB988]

SENATOR WIGHTMAN: And that's my understanding, that the larger Class B high schools... [LB988]

SENATOR FRIEND: One minute. [LB988]

SENATOR WIGHTMAN: ...were probably the lowest. Would that stand to reason? [LB988]

SENATOR RAIKES: They were below, you say? [LB988]

SENATOR WIGHTMAN: That they were probably the lower area as basic funding. Is that because they're the lowest cost? [LB988]

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SENATOR RAIKES: Well, I would say, yes, generally that size group, and that would probably include those larger Class Bs, as you mentioned, so that would be correct. [LB988]

SENATOR WIGHTMAN: Okay. Now does some of this come from the fact that they were low-spending districts during some period when you arrived at the expenditures that each district made per student back, say, prior to LB1059? [LB988]

SENATOR RAIKES: Spending history may well be involved, but this is actually...these numbers are based on the spending information in the most recent year of available data. [LB988]

SENATOR WIGHTMAN: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB988]

SENATOR FRIEND: Thank you, Senator Wightman and Senator Raikes. Senator Ashford. [LB988]

SENATOR ASHFORD: Question. [LB988]

SENATOR FRIEND: Senator Ashford, you were last on the queue so I do not believe that that is even necessary, but thank you. Senator Raikes, you are recognized to close on AM2545. [LB988]

SENATOR RAIKES: Thank you, Mr. President and members. This is a, to remind you, this is an amendment that includes a number of technical provisions, one substantive provision that involves the budget authority for participation in Network Nebraska. I would urge your support. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Members of the Legislature, you have heard the closing on AM2545. The question is, shall AM2545 be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Have all senators voted who wish to? Senator Raikes, for what purpose do you rise? [LB988]

SENATOR RAIKES: Mr. President, I would request a call of the house. [LB988]

SENATOR FRIEND: Members of the Legislature, there has been a request for a call of the house. All those in favor of the house going under call please vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB988]

ASSISTANT CLERK: 29 ayes, 0 nays to go under call, Mr. President. [LB988]

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SENATOR FRIEND: Thank you, Mr. Clerk. Members of the Legislature, the house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Christensen, Senator Preister, Senator Synowiecki, Senator Nelson, Senator Dierks, the house is under call. Senator Christensen, please check in. Thank you. Senator Preister, the house is under call. Senator Raikes, for what purpose do you rise? [LB988]

SENATOR RAIKES: Mr. President, I would accept call-in votes. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Mr. Clerk. [LB988]

ASSISTANT CLERK: Senator Langemeier voting yes. Senator Flood voting yes. Senator Dubas voting yes. Senator Cornett voting yes. Senator Nelson voting yes. Senator Preister voting yes. Senator Fulton voting yes. Senator Harms voting yes. [LB988]

SENATOR FRIEND: Record please, Mr. Clerk. [LB988]

ASSISTANT CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the amendment. [LB988]

SENATOR FRIEND: AM2545 is adopted. I do raise the call. [LB988]

ASSISTANT CLERK: Mr. President, the next amendment I have is from Senator Kopplin, AM2433. (Legislative Journal page 1017.) [LB988]

SENATOR FRIEND: Senator Kopplin, you are recognized to open on AM2433. [LB988]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. This amendment simply establishes a school finance task study force, report of which would be due in October of 2009. It sets the membership of such a study and it asks for a comprehensive study. And part of that membership are people that actually work with the finance formula in schools. It's a good bill. Vote for it. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Kopplin. Members, you have heard the opening on AM2433, amendment to LB988. There are senators wishing to speak. Senator Gay, you're recognized. [LB988]

SENATOR GAY: Thank you, Mr. President. I rise in support of this. I do think this is a very good amendment and I know we just talked about, well, you got to let it work, you got to let it work, but at some point I think we need to look at this whole thing. We're walking through these formulas and we're talking about, well, they're hard to

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understand. I believe they are, and I think this is a good step in the right direction, even if...it can't hurt for a longer term view of the world, I guess. There's probably some very good things in this bill; there's probably some bad things. And when it's all said and done tonight, whatever ends up that we're doing, I still think we're going to leave and say, well, what did I do? And I think you'd be kidding yourself if you went home and told, I understand what we're doing. I think we're getting a better understanding and I appreciate the conversation that's happening tonight, but this is a very important piece of this bill, I think. I don't know where I'm at on the whole bill right now yet either, but I do like this. Of all the amendments so far that I've seen I think, you know, quite honestly, it's a small one but it's an important one. So I'd encourage that we look into this over the summer, as Senator Kopplin had, and I commend him for bringing this amendment. Thank you, Mr. President. [LB988]

SENATOR FRIEND: Thank you, Senator Gay. Senator Raikes, you are recognized. [LB988]

SENATOR RAIKES: Thank you, Mr. President and members. This is...this is not something that I guess I'm strongly opposed to in any fashion, but I will tell you this. School finance, I think, is something that is going to be an ongoing study, if you will. The Legislature has an Education Committee and a major concern of that group every year is going to be school finance. I mention that because I hope that you wouldn't support this idea in hopes that we are going to find the answer; that we have this study and we will come up with the answer. There is no "the answer." It's an ongoing process. As Senator Erdman, I think, mentioned, you've got a number of provisions, a number of concepts that you're working with. You need to consider each of those. A study is not without cost. If you're going to do a study, at minimum, you may not pay the people who are involved in it but certainly you have to pay the expenses and that sort of thing. I'm not suggesting that it's a major expense but it is something. I will also tell you that prior to the first introduction of the concept that's in LB988, we had a study effort, if you call it that, that involved every superintendent in the state of Nebraska. We invited every single one to a meeting that was as close as possible to them. We went to meet with them, discuss the issues that they were facing dealing with finance, and tried to then...well, in fact, did come up with the concepts that underly LB988. That effort did not have a statutory basis. There was not a statutory provision included that you will do this study. Doesn't mean that to do so is a bad thing, but it's something that I think, in my limited experience, is handled perhaps better with an ongoing, wide-reaching effort by the Education Committee and whomever they would choose to join them in the effort. So again, I am actually somewhat neutral on this amendment. I do think that school finance, as I say, is an ongoing effort. Thank you. [LB988]

SENATOR FRIEND: Thank you, Senator Raikes. Senator Avery, you are recognized. [LB988]

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SENATOR AVERY: Thank you, Mr. President. You may remember, colleagues, earlier in this session I had a proposal for a task force to study the revitalization of Centennial Mall. That crashed and burned, and it did so, in part, because Senator Flood raised a very interesting and valid point about the proliferation of task forces and his growing concern about the erosion of legislative prerogatives by bringing in so many people from the outside to share our responsibilities. And I agree with him on that, and he and I have been working on a way to achieve some of the purposes of task forces by doing it within this body, within the confines of interim studies. So I am going to ask Senator Flood if he would be willing to yield to a question. [LB988]

SENATOR FRIEND: Speaker Flood, will you yield to a question? [LB988]

SPEAKER FLOOD: Yes, I will. [LB988]

SENATOR AVERY: Speaker Flood, is it still your opinion that task forces are perhaps not in the best interests of this body, no matter how noble their purposes? [LB988]

SPEAKER FLOOD: Well, that's true. I want to clarify that. Task forces that are organized under the executive branch, fine, that's the prerogative of the Legislature to set one up and have the Governor appoint them. But my opinion has always been, if it's organized under the Legislature or if the Legislature appoints, that's a ceding of the authority given to us by the voters. We're paid to come in and make the decisions. We can hold hearings. We can bring in experts. We can discern, as members, what is in the best interests of the state as policy. And I have been active this session in trying to dissuade and work to clean up all of the task forces and commissions that have been organized under our branch of government, and I would have the same concerns here. [LB988]

SENATOR AVERY: Thank you, Speaker Flood. I think that that policy is the correct policy, despite the fact that one of my bills was a victim. But Speaker Flood has been very cooperative with me on a task force that I was trying to create for the base realignment and closure issue. We're going to do it with an interim study and we'll probably do just as fine a job, if not better, than a task force with outside members on it. So I would just say to Senator Kopplin, I agree with you in principle about the need for a study. Perhaps we should look at doing this through the Legislature and an interim study. We have the ability to bring in the outside experts that we would need to answer the questions that you want answered, but I think that as the proposal now stands I would have to vote no. Thank you, Mr. President. [LB988]

SENATOR FRIEND: Thank you, Senator Avery. Senator Pirsch, you are recognized. [LB988]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if

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Senator Kopplin might yield to a couple of questions, Senator Kopplin? [LB988]

SENATOR FRIEND: Senator Kopplin. Senator Kopplin, will you yield to a question from Senator Pirsch? [LB988]

SENATOR KOPPLIN: Yes, sir. [LB988]

SENATOR PIRSCH: Thank you very much, Senator. I wonder, I just had a couple of clarifying questions with respect to your task force proposal embedded in this amendment, one of which deals with the purpose of the task force. In looking over the amendment, it says that the purpose--and let me know if I'm wrong here--is to accomplish the goals in Section 50 of the act with appropriate implementation strategy. Is that correct? [LB988]

SENATOR KOPPLIN: Yes. [LB988]

SENATOR PIRSCH: What exactly is that purpose that's embedded then in Section 50 of the act, and what is it meant in the amendment to say "with appropriate implementation strategies"? In other words, what will be the focus of this task force should they meet? [LB988]

SENATOR KOPPLIN: Well, obviously, there will be a study some day, I can guarantee it. We need to look at...from people who actually use it. See, I don't think we have a bad state aid formula. I think we made some mistakes on how it's being implemented this year. But the task force would say this is how it works, this is really good, this is not considering everything, and so on and tell us those things. I don't want to take your time but... [LB988]

SENATOR PIRSCH: Oh. Well, thank you. I appreciate that. I guess my question is it seems to me a big factor in the yearly process of whenever this bill comes around has been whether it's...the state finances and at least it seems to be affected somewhat this year by the overall general economic climate or health of the state, and I'm wondering, is that not going to be a year-by-year type of analysis such that, you know, this committee is meeting in October, I'm sorry, is to meet...well, when is the...they meet in all three Congressional districts and report to the Legislature prior to January 1, but when do they begin meeting then under...do you remember, under the amendment? [LB988]

SENATOR KOPPLIN: Well, they would begin meeting as soon as possible. It takes a long time to do a study. [LB988]

SENATOR PIRSCH: Okay. Would there be the nature of things that change, as that changed in this last session so quickly, the projected economic health, would it...are we

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addressing issues through this task force that would be not affected by the health of the economy, which is a constantly changing thing, in the way we kind of viewed that in the beginning of January might have changed after February 10, so to speak, and such that it would still be relevant and helpful information? That's the question. [LB988]

SENATOR KOPPLIN: Well, the economy does change and that's one of the problems. [LB988]

SENATOR PIRSCH: Yeah. [LB988]

SENATOR KOPPLIN: You need a steady source of state aid based on what you asked school districts to do and told them you would pay for, but it needs to be steady. Yeah, the economy is going to go up and down. [LB988]

SENATOR LANGEMEIER PRESIDING [LB988]

SENATOR LANGEMEIER: One minute. [LB988]

SENATOR KOPPLIN: I mean, sometimes we have to put more money in and sometimes less, but it needs to be stable and a study could begin to say, yeah, this is a good part of the bill...or the formula, this is not so good. I'm not talking against... [LB988]

SENATOR PIRSCH: Sure. [LB988]

SENATOR KOPPLIN: ...our formula. [LB988]

SENATOR PIRSCH: Sure. So the task force may say if the economy on February 10 ends up being this, we'd recommend this course of action; if it ends up being on this end of the range, we'd recommend this course of action. Is that the anticipated...maybe a range of actions as opposed to one uniform action? [LB988]

SENATOR KOPPLIN: The formula should produce a stable funding source for schools. I can't help when the economy goes up or when it goes down, but school districts should know that it's stable for them. [LB988]

SENATOR LANGEMEIER: Time. [LB988]

SENATOR PIRSCH: Thank you very much. I appreciate it. [LB988]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Those wishing to speak, we have Senators Loudon, Pahls, Chambers, Raikes, and Avery. Senator Loudon, you're recognized. [LB988]

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SENATOR LOUDEN: Thank you, Mr. President and members of the body. I would probably support Senator Kopplin's amendment to have a study because nothing can rally the voters so much as having a study on school situations in the state of Nebraska as to do something like that. I don't know however many of you but I think here in about 2002, 2003, must have been 2004 somewhere we had that LR180, I think it was, or LS180, whatever it was called, and at that time I think they had a hearing out in Mullen, they had one in Broken Bow, and they had one in Wahoo that I attended. Anyway, during those studies, why, there was...or hearings, whatever that you want to call them, I suppose all of them together there was probably 900 people that showed up to those. There was over 200 in Mullen and I'm sure there was over 300 in Wahoo and a goodly number in Broken Bow. But anyway, the course of that was, was about closing the Class I schools and out of that study, that LR180 or whatever it was, I think...and Senator Raikes could correct me on that, I'll stand corrected if I'm wrong, but I think LB126 came out of that. But out of those people that showed up to testify at those hearings, there weren't any in Mullen that testified in favor of this. Closing the small Class I schools is what the study was about. I think probably in Wahoo there might have been nine. I wasn't at the Broken Bow one. My understanding, there was very few there. In other words, it was probably a ratio of about 100 to 1 that was against closing the schools, but out of that hearing or out of that study we had LB126 and it got passed through, and we've been through it ever since. Now when you have one of these, you got to hope that the Department of Education and some of those people are going to be behind you on what findings you have. Because you can come up with some findings out there and you can have all kinds of people testify, but when it really gets down to some of the people that want to do something, a lot of that testimony didn't mean whiff. And that's exactly what happened before when I've seen these studies come about. So I would hope that if you...this one here, if it is implemented, that it is handled quite well and it does have some consideration to what some of the people that would testify or would study it and would come out with, it wouldn't be just some kind of a wallpaper job done to go ahead and promote an agenda that was already in progress. So with that, if Senator Kopplin takes this to a vote, I will vote for this. But I have to say I have misgivings about it that I would hope that it would be handled correctly and we'd have to be very careful on how it is chaired and who runs the thing. Thank you, Mr. President. [LB988]

SENATOR LANGEMEIER: Thank you, Senator Louden. Senator Pahls, you're recognized. [LB988]

SENATOR PAHLS: Mr. President, members of the body, Senator Kopplin, I'm sort of going to start that task force right now. Here is an example of something I think that may be brought or may, in the future, be brought up if you would have a task force. If you notice, just recently the pages handed you a very colorful diagram and it talks about three school systems, and I happened to pick the three largest school systems in the state of Nebraska. You can find this information on any school that you want, and this is

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some of the things I think maybe the task force would point out. Let's...the first one I think at the top of yours is the Millard school system. It is the third largest school system. What I want you to take a look at, that little pie chart, this is the thing that upset me a couple years ago because I wanted to make sure our dollars got into the classroom instruction, so just take a look at the red part of that diagram. Shows you about how much money supposedly gets to the classroom in the Millard school system. Now take a look at how much money goes into the Omaha school system in the classroom. Now take a look at how much money gets to the classroom in the Lincoln Public Schools. Do you see some discrepancy? Now below that circular graph you will see what they're talking about, like "All Instruction," "Support Services," and it gives the money. Now if you really want to find out what "All Instruction" means, you could click on the computer and it would give you that information. I talked to the...and my staff talked to the state department about the reliability of this, and this is what they told me; that, well, certain schools put certain items in certain areas. So I thought, hmm, that's not very good. I mean, I know local choice, but we do want to make sure that the information that's sent to the state department is relevant to all those areas so we could make some kind of a comparison. But again, I was concerned in the past the amount of money that hits the classroom, and you can see there is a major difference. Now I am sure all three of the school districts, they have different requirements and different needs. I think that's understandable. But I think somebody ought to be able to justify where these monies are going in each one of those little compartments. Because you take a look at the largest school district, they get a pretty good chunk of federal dollars, and rightly so because they do...to get federal dollars you have to meet certain needs or qualifications. But do we really know who is checking up on that? That's my concern. Now here is the next scenario. Let's say that we do cut an additional \$11 million from these schools. I'm going to show you how that affects these three schools. Now I know some of your schools are losing, but I'm just going to show you the three largest schools. Well, Millard will come out with an additional \$40 per child. Now these numbers may be rough because I didn't have the exact number of children who do attend these schools. Well, Lincoln, they're going to come up with another \$350 per child. I'm talking extra, more. And of course, Omaha is going to come up between \$400 and \$500 more per student. The question I have, I'm not saying they don't deserve that \$500 more, approximately, per student, I'm not saying they don't deserve that, but who's going to hold them accountable? That's my concern. We're going to pour more money into the largest school district and that's after we cut \$11 more million from the package,...

[LB988]

SENATOR LANGEMEIER: One minute. [LB988]

SENATOR PAHLS: ...if we do do that. Pardon? [LB988]

SENATOR LANGEMEIER: One minute. [LB988]

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SENATOR PAHLS: Okay, thank you. So there are a lot of elements that we need to take a look at. I'm really concerned about, okay, let's give them more money, but where is the accountability? Now I heard the accountability is going to send a poverty plan to the state department and a couple other plans they're going to take a look at, going to take a look at achievement. Okay, so they send a plan, somebody approves it, they get evaluated. So what? What's going to change? See, I think that we ought to take a look at also the accountability and I think most educators would not be in disagreement with that. In my next time around, I'll have a couple of suggestions on that area. But every school district, every school you can find this information, very detailed. I think it's information that we need to take a look at and see why some schools perhaps are more efficient than others. Again, I'm pointing it out: \$500 for one school, \$350 for another, \$40 per kid for another. [LB988]

SENATOR LANGEMEIER: Time. [LB988]

SENATOR PAHLS: Thank you. [LB988]

SENATOR LANGEMEIER: Thank you, Senator Pahls. Senator Chambers, you're recognized. [LB988]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I regret having to stand and speak against Senator Kopplin's amendment, but I feel no qualms of conscience about opposing it. I developed a special bond with Senator Kopplin when I was in my office and heard him telling the story about the child who went to school and put on the little boots and the shoes that were too small for him, and the teacher worked hard to get them over his shoes and then the little boy said, after she did all that work, they're not my shoes...or boots. So when the teacher took them off, he said, they're my brother's; I wear them sometimes. He tells the kind of story I like. When somebody tells a story like that, I bond with them. Senator Don Wesely and I got along famously, but it became even more tight a relationship when I heard him on the floor talking, and again I was in my office. He said--and I've said this so many times, quoting Senator Wesely--U.S. Grant had two favorite songs; one of them was "Yankee Doodle Dandy" and the other one wasn't. I thought that was my kind of story also. You know, I hope, from that that I have nothing against Senator Kopplin, but as I count up the people who are on his proposed task force, which I oppose, the Education Committee Chairperson would be there; the Appropriations Committee Chairperson would be there; five people from the Legislature appointed by the Exec Board; the Governor or his representative would be there; K through 12 people, there would be five of them appointed by the Governor and they are to include school board members, teachers, administrators, parents, and students--by making each of those categories plural I guess all five could come from one, but since there are five categories I don't know whether you're saying there would be one each from these categories, or there would be five from each category, I'm not sure, but in any case, they would all be appointed by the Governor;

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one from the Association of School Boards; one from the NEA, the Nebraska Education Association; one from the Council of School Administrators; three from industry and business, again, appointed by the Governor. The Governor would appoint at least 9 people on a 19-member task force. It would be stacked, I believe, with people who are not interested in seeing the learning community go. It can be nothing but an impediment. This bill, without the E clause, takes effect some time in July. There is to be action on this task force 30 days after the effective date of this bill. So that means 30 days after it becomes effective, you have a task force to study what hasn't even taken place. Senator Pirsch, I'd like to ask you a question. [LB988]

SENATOR SCHIMEK PRESIDING [LB988]

SENATOR SCHIMEK: Senator Pirsch, would you yield to a question? [LB988]

SENATOR PIRSCH: I would. [LB988]

SENATOR CHAMBERS: Senator Pirsch, I don't know whether you handle any cases that involve jury trials, but you know how jury trials are conducted, correct? [LB988]

SENATOR PIRSCH: Yes, and I did. [LB988]

SENATOR CHAMBERS: Did you ever see a set of circumstances where a case was submitted to the jury and, after it was submitted, the evidence then is presented? [LB988]

SENATOR PIRSCH: No, that's not the way it should be structured. [LB988]

SENATOR CHAMBERS: How does it go? [LB988]

SENATOR PIRSCH: (Laugh) The evidence should be conducted during the...or presented during the trial portion and then, when the jurors retire to the chamber to deliberate, then there should be no, at that point in time, very...under very extremely rare circumstances would any... [LB988]

SENATOR SCHIMEK: One minute. [LB988]

SENATOR PIRSCH: ...reason exist for the jurors to have additional facts presented or evidence. [LB988]

SENATOR CHAMBERS: Thank you, because my time is running out. Members of the Legislature, you're being asked to let the jury begin its deliberations when no facts have been forthcoming. Nothing has been done under this bill at the time that the task force begins its study and its deliberations. They don't know what is going to happen or what

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might happen. I don't think this task force will advance the cause that is to be realized through the learning community process. And as I listen to this discussion, I'm feeling more and more pressure to run for that board. It's not something I desire, but you all are making it hard for me not to do it. Thank you, Mr. President. [LB988]

SENATOR SCHIMEK: Thank you, Senators Chambers and Pirsch. Senator Avery, you are recognized to speak. [LB988]

SENATOR AVERY: Thank you, Madam President. I just want to raise a few questions for you to contemplate and one of them will deal a little bit with a point that Senator Chambers just raised. But one question is, what do we think we can learn with this study that we don't already know? I have now had two years of experience working with the Education Committee and the Education staff. I'm telling you, I can't imagine that there is anybody who knows more about school funding than the staff of the Education Committee--first rate. Another question: Do we really want to replace this Legislature's Education Committee with a task force? I think we don't. I think the Education Committee and the capable staff are quite equipped to do such a study and I believe it ought to remain in the Legislature. And that leads me to the other question: Do we really want to cede the Legislature's authority to set education policy to the executive branch and to others who are not part of this Legislature? Senator Chambers was calling your attention to the makeup of the committee. This Legislature will only have eight members, the Governor will appoint nine, and there will be four others that are appointed by the other boards. Obviously, they're related to education. They have some knowledge about it. You have a total of 21. And the Legislature is basically saying we can't do this so let's let somebody do it for us. There's a blurring of authority here. I think that it is...we should not so casually cede the authority of this Legislature to set policy. It is our responsibility and we can do it, so let's do it. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Avery. Senator Pahls, you are next in line to speak. [LB988]

SENATOR PAHLS: Madam President, members of the body, want to just continue a little bit more. I do not want us to lose sight that if this money goes to the schools and some schools are receiving tremendous amounts, we need to hold them accountable, and don't tell me it's sending in a program into the state saying this is what we're doing and this is how we're going to evaluate it. I think we need to take a serious look at that. And if you can recall last year, for some of you, or the year before when I was talking, I think schools should, if they really want some of this additional money, they should make themselves available for what I call audits. Teams should come into some of these school districts and sort of analyze them; tell them the good, the bad, and the ugly. If they're willing to do that then I'd say maybe that money ought to flow a little more freely. I do have some concerns that you will not make changes just by giving additional dollars. Not saying they don't deserve it, but if it gets to the teacher and to the

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classroom, I'd be all for that. But if you take a look at those little circles, you can see in some school districts apparently it's not getting there or maybe I don't understand why it is not getting there and that could be a possibility there. But I do think we need to take a look at what some states do. They go into school districts if they choose to, the school has to want to do that; they analyze; they go into buildings; they talk with parents, they talk with the staff, the students; they really find out how...like the parts of that school and then school works on that. That's what I tried to suggest when we were trying to get the learning community established. So I do think there are ways, things that could be discussed at a task force. I think there are a lot of creative people out there who might sort of shake up the bureaucracy that I think is in a number of our schools and even probably in our State Department of Education. Now here's one thing I am...and I heard Senator Chambers say something like this. I am a little angry with him and this is...and I'm going to use one of his poems. I think it was yesterday he talked about the leg, he talked about the ankle, he talked about the foot. There's one part he forgot. Senator Chambers, I "toed" you to run for that learning community; we need your expertise in that. Now for those people on the outside, they may not understand that, but Senator Chambers, on a daily basis, gives us a spirit of poetry and I tried to do a little bit of twist on that, dealing with the word that I had used. But again, I do think that a task force may have its benefits if we seriously think good things can come about it. Again, Senator Chambers, I told you and I don't want to keep telling you, but you should think about that. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Pahls. We are on discussion of AM2433. Seeing no further lights, Senator Kopplin, would you like to close on your amendment? [LB988]

SENATOR KOPPLIN: Yes, I would, mostly just to answer a couple of things. I heard some interesting comments out here tonight and I want to answer them a little bit. Number one is I heard the implication that we ought to...this ought to be an Education Committee thing. Last summer I put in an interim study on this very issue. It wasn't prioritized in the committee, even though four committee members signed onto it. We had no funding, no support. It simply wasn't that important. We did the best we could, found out a lot of good things. But you know what? It didn't have the backing of the Education Committee, not deep down. Other things I've heard about what do studies tell you; you know, how do you put all these things together; studies can pretty much tell you a lot or they can tell you nothing. If you have people that really take it serious and go after the facts and the details, they could be of very valuable information to this body. The other thing I was going to point out, and you guys all know that, term limits. Next year there's only going to be like nine or ten people that have more than two years of experience in this body. You aren't going to have anybody that knows anything about school finance. Those of you that are busy with your papers, trying to figure it out, think you have an idea, but it's far more complicated than that. You will not have it. We need a study, maybe not this one, although I'm getting pressured from both sides--take it to a

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vote; don't take it to a vote because there are some legal issues with, or there's not some legal issues with it. It wouldn't likely pass, but maybe it would. I don't know. Doesn't really matter to me because this body needs to do a study sooner or later, better sooner than later. And you need to think about some things. Unless we can figure out a way to get Tammy elected to this body, you won't have a senator that knows anything about school finance. I'd like to withdraw this motion. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Kopplin. It is withdrawn. Mr. Clerk, do we have another amendment? [LB988]

ASSISTANT CLERK: Madam President, the next amendment I have is offered by Senator Friend, AM2431. [LB988]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Friend, you are recognized to open on your amendment. [LB988]

SENATOR FRIEND: Thank you. Thank you, Madam President. And as I had mentioned to the Clerk, based on some discussions I had earlier, I'd like to withdraw that amendment at this moment. [LB988]

SENATOR SCHIMEK: It is withdrawn. [LB988]

ASSISTANT CLERK: Senator Raikes, AM2547. (Legislative Journal pages 1130-1132.) [LB988]

SENATOR SCHIMEK: Senator Raikes, to open on AM2547. [LB988]

SENATOR RAIKES: Thank you, Madam President, members of the Legislature. AM2547 corresponds to the green model, the green sheets. This is an adjustment to LB988 from General File that deals with actually two or three components, really. One of them is stabilization of the aid that school districts receive. The second one is extending the averaging adjustment for one year only. And finally, some changes in the teacher education adjustment. Actually, I'll give you very quickly at the start of this amendment the total state aid paid was about \$854 million. With the changes brought by this amendment, the state aid comes to \$851 million. Specifically, the aid stabilization is that for 2008-09 it would be not less than that in 2007-08, minus 2.5 percent of the 2008-09 need. And also it's a two-year provision, so for 2009-10 aid would not be less than 5 percent of the 2009-10 need. Averaging adjustment, this is the provision where for school districts that are lower, they are lower in costs, their basic funding array is lower than the state's average cost, according to levy authority they are...needs are increased to reflect that amount of levying authority, and the extent to...or that levy...or the levying history, if you will, or the actual levy imposed and the difference between their cost group...or, not cost group, but basic funding average and

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the statewide average amount. We extended that to levies below \$1, in fact down to 97, 96 cents. Finally, the teacher education adjustment is affected because that is...we reduced the teacher education adjustment in order to provide the money needed to pay for these other two changes. The teacher education adjustment, the factor is reduced from 13.75 percent to 10 percent. I hope you've had an opportunity to look at the copies, the green copies. If you have any questions on those, I'd be happy to try to answer them, any additional questions. I urge your support of this amendment. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. You have heard the opening on AM2547. Are there any who wish to speak on the amendment? Senator Raikes, there are no lights. Oh, excuse me. Senator Fischer is recognized to speak. [LB988]

SENATOR FISCHER: Thank you, Madam President and members. This is an amendment that addressed some of the concerns that I expressed on General File on this bill and I do thank Senator Raikes for working on this and bringing an amendment to handle some of them. As we discussed earlier, there's a number of districts that not just see a cut in state aid, they see no state aid. They see a loss under LB988. And with this amendment there's a stabilization factor put in that will help those districts to at least adjust to what they know is coming. Because when aid is certified February 1 and you're told you're going to get so much and then, after actions that may be taken on the floor of this Legislature and you receive a recertification on April 30, saying that you've lost 38 percent of that anticipated aid, or that you've lost 17 percent of that anticipated state aid and, sorry, but you need to make adjustments before you finalize your budget in a couple months, that's hard to do. So I do support this amendment because it gives those districts a chance to ease into the anticipated losses that they're going to be facing if LB988 is passed. And I do thank Senator Raikes for working on this and realizing that it is difficult for many of these districts who receive a small amount in money in state aid but, yet, their cuts are a large percentage of that. So thank you, Senator Raikes, and I do plan to support this amendment. [LB988]

SENATOR SCHIMEK: Thank you, Senator Fischer. Are there any others who wish to speak on the Raikes amendment? Seeing none, Senator Raikes, you are recognized to close. [LB988]

SENATOR RAIKES: Thank you, Madam President, and thank you, Senator Fischer, for those comments. This is, I think as I mentioned before, very consistent with our policies in the past regarding changes in the formula. The intent is to lessen, as much as possible, financial shocks on school districts. This is certainly in that vein. As I mentioned, the net impact on state aid is, from the end of General File actually, is a little bit down, so it's both a sustainable...financially sustainable provision, plus it also addresses the important issue of stability. I urge your support. Thank you. [LB988]

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SENATOR SCHIMEK: Thank you, Senator Raikes. You've heard the closing on AM2547. The question is the adoption of AM2547. All in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 33 ayes, 0 nays on the adoption of Senator Raikes's amendment, Madam President. [LB988]

SENATOR SCHIMEK: Thank you. The amendment is adopted. Next item. [LB988]

ASSISTANT CLERK: Madam President, some items: Senator Langemeier has an amendment to LB777; your Committee on Education reports LB1079, LB1151, and LB1153 to General File. (Legislative Journal pages 1132-1134.) [LB777 LB1079 LB1151 LB1153]

Next amendment to LB988 is offered by Senator Raikes. Senator, I have AM2553, but a note that you wish to withdraw this and substitute AM2585? [LB988]

SENATOR SCHIMEK: Senator Raikes, did you hear the question? [LB988]

ASSISTANT CLERK: Senator, the note that I have is that you wish to withdraw AM2553 and substitute AM2585. [LB988]

SENATOR RAIKES: Should be on AM2548. [LB988]

ASSISTANT CLERK: Okay, I have AM2548 in front of me, Senator. (Legislative Journal pages 1134-1135.) [LB988]

SENATOR SCHIMEK: Senator Raikes, to open on AM2548. [LB988]

SENATOR RAIKES: Thank you, Madam President and members. I'm sorry for the confusion. This amendment corresponds to the pink copies of the printout. It makes two changes in provisions from what you have in the green copies. First, the averaging adjustment, which is a part of the needs calculation, a component of the needs calculation, is reduced for each qualifying district by 25 percent. So that I hope is fairly understandable. The averaging adjustment which is shown on the needs calculation sheet is reduced for each district by 25 percent. Second, it reduces the allocated income tax rebate by \$20 million. Now, that doesn't mean that there is a \$20 million reduction in state aid. Rather, the amount of money that's devoted to the income tax rebate is reduced by \$20 million and there is a much smaller...a small portion of that that actually ends up being a reduction in state aid. The net result of these two changes reduced the state aid by just a little over \$11 million, so the final...or the state aid number, then the calculated state aid number with this model is \$839 million. This is again...is certainly a proposal worthy of serious consideration. I would...I do support it

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and I will tell you that even though it reduces state aid by \$11 million that there still is a state aid increase available to school districts, and I would also emphasize that this occurs for one year. Following the first year, these changes would go away and we would go back to the green copy provisions. So this is very much a provision, can be viewed as one that keeps the funding requirements by the state consistent with what a lot of us believe is an appropriate amount in terms of budget balance, if you will, and also sustainability as we head into the future. Again, if you have questions, I'll be happy to try to answer them. This amendment corresponds to the pink copy and I urge your support. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. You have heard the opening on AM2548. Are there any senators wishing to speak on this amendment? Senator Kopplin, you are recognized to speak. [LB988]

SENATOR KOPPLIN: Thank you, Madam President. I'd like to ask Senator Raikes a question, please. [LB988]

SENATOR SCHIMEK: Senator Raikes, would you yield to a question? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR KOPPLIN: Senator Raikes, my question fits because you said this is a one-year thing. We have put two bills into this that take place the year after. That's the new school funding bill and the rapid growth part of it. Are those going to remain in state aid? [LB988]

SENATOR RAIKES: Yes, absolutely, and I'm glad you bring that point up, Senator, because that...they will go into effect, actually beginning with the February 1 certification in 2009, and remain in effect thereafter. Those are very important provisions and certainly it is fully my intent and I hope that of the Legislature that they be included. [LB988]

SENATOR KOPPLIN: Okay. Thank you. Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senators Kopplin and Raikes. Seeing no further lights, Senator Raikes to close on your amendment. [LB988]

SENATOR RAIKES: Thank you, Madam President, and thank you again, members. This is an important provision certainly or an important decision. I hope you will agree with me that this is something that for one year is something that is not painless, certainly, but it is important, important in terms of keeping in mind the financial sustainability for the state, and I hope that you will join me in supporting it. Thank you. [LB988]

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SENATOR SCHIMEK: Thank you, Senator Raikes. You have heard the closing on AM2548. The question is the adoption of AM2548 to LB988. All in favor vote aye; all opposed vote no. Have you all voted who wish to vote? Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 26 ayes, 1 nay, on the adoption of Senator Raikes' amendment, Madam President. [LB988]

SENATOR SCHIMEK: The amendment is adopted. Next amendment. [LB988]

ASSISTANT CLERK: Madam President, the next amendment I have is from Senator Raikes, AM2553. [LB988]

SENATOR SCHIMEK: Senator Raikes to open on AM2553. [LB988]

ASSISTANT CLERK: Senator, this is the one that previously you had a note to withdraw and substitute AM2585. [LB988]

SENATOR RAIKES: Thank you, Mr. Clerk, and AM2585 is what I would like to go to now, if that would be okay? [LB988]

ASSISTANT CLERK: Madam President, Senator Raikes would offer AM2585. (Legislative Journal pages 1136-1137.) [LB988]

SENATOR SCHIMEK: Senator Raikes, to open on your amendment. [LB988]

SENATOR RAIKES: Thank you, Madam President and members of the Legislature. I'll take a bit to explain this to you. AM2585 would amend into LB988 the provisions of LB1017 as amended by the Revenue Committee with the exception of a date change. So this is a bill that came through the Revenue Committee. It advanced by a vote of 5 to 1. The purpose of this amendment is to address a situation in which a handful of school districts and educational service units issued bonds without approval from their voters to finance insurance costs. There are several things about this practice that I think are of concern. First, it is questionable whether or not these school districts and ESUs had the authority to issue these bonds in the first place. The interpretation that this practice was authorized stems from Section 44-4317, the language in that section taken in isolation appears to provide a public agency with the ability to issue bonds to pay insurance premium if the public agency has the authority to levy a tax. However, the intent of the act that contains this section of statute, the Intergovernmental Risk Management Act, is to allow public entities to join together to form risk management pools for insurance. From that standpoint it would seem that the levy and bond authority offered in this section would apply only to participation in risk pools which school districts and ESUs are prohibited from forming for purposes of health, dental, accident, and life insurance.

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This amendment addresses the manner in which levies issued pursuant to Section 44-4317 are treated for purposes of the levy lid, however the Legislature may need to revisit this issue to clarify that the levy and bonding authority are intended to apply only to participation in risk pools. However, for the moment I am mostly concerned with the message that the Legislature needs to send to school districts and ESUs about the practice of using bonds to finance insurance costs. These are bonds, of course, that can be issued without a vote of the people. Furthermore, all bonds, whether approved by the public or not, are exempt from the levy lids. Thus a subdivision that takes advantage of this provision is able to exceed its levy lid by whatever amount is necessary to finance the bond without approval from the voters. In the case of one school district, the annual insurance bond levy is more than 20 cents per \$100 of valuation. In fact, of the nine school districts known to have taken advantage of this provision, seven have annual insurance bond levies in excess of 12.8 cents. Two of the three ESUs who utilize the insurance bond provision more than doubled their maximum levy authority of 1.5 cents. Simply put, this practice undermines the integrity of the budget lids and accountability to the public. It is poor practice, in my opinion, for a political subdivision to subject taxpayers to additional costs for the primary purpose of obtaining an exception to the levy lid. The solution proposed in this amendment would make levies issued by schools or ESUs pursuant to Section 44-4317 subject to the levy limitations except that levies issued by such subdivisions to finance bonds issued prior to the effective date of the bill would be exempt from the lid until fiscal year 2012-13. The 2012-13 transition is a year later than what was proposed in the Revenue Committee amendment to LB1017. At that point, taxes levied to finance insurance bonds would be excluded from the levy lid exception for bonds. This gives the schools and the ESUs that issued these bonds a period of four years before the taxes levied to finance these bonds would become subject to the levy lid. The amendment does not change the manner in which levies issued pursuant to this section by other political subdivisions are treated for purposes of the lid. So let me try to summarize. This deals only with school districts and ESUs. It is a situation where in my view it took a rather generous interpretation of the statute for this to happen at all. But you had some school districts and ESUs believing that they were operating within the statute that went ahead and took advantage of this provision. I think it is absolutely essential that the Legislature give notice that this practice is not consistent with the Legislature's intentions. It is not consistent with levy lids, or budget lids for that matter. We are left...so there's no choice...or there is no question but what this practice should not be allowed here forward. We are left with the question of those who get it, how long do you allow them to...how much time is allowed for this provision to be undone, so to speak, or ended for the ones who have already entered this? What we have done here is we have allowed...in this proposal we're allowing to the year 2012-13. So that is the subject and a description, hopefully, of what it is we're proposing here. So if you have questions I'll try to answer. Thank you. [LB988 LB1017]

SENATOR SCHIMEK: Thank you, Senator Raikes. Before moving on, the Chair would like to recognize Speaker Flood for an announcement. [LB988]

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SPEAKER FLOOD: Thank you, Madam President and members. We have had quite a day today. We continue to remain on LB988. A number of amendments remain, therefore it is my intention after we move or resolve LB988 in whatever fashion the Legislature so desires, that we will adjourn after LB988, for the day, and return tomorrow morning at 9 a.m. If you're making plans, just a quick note, but we will adjourn after the resolution of LB988. Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Speaker Flood. Mr. Clerk. [LB988]

ASSISTANT CLERK: Madam President, Senator Langemeier would offer AM2588 to AM2585. (Legislative Journal page 1137.) [LB988]

SENATOR SCHIMEK: Senator Langemeier to open on your amendment. [LB988]

SENATOR LANGEMEIER: Mr. President and members of the body, I rise in two fashions here. I'm going to support Senator Raikes' AM2585, however with the adoption of AM2588. As Senator Raikes has clearly stated, this is kind of a loophole out there, and we all have concerns over it. We have a number of people that have levied well over their levy limits through this bonding on the side. However, of the 12 schools that are in here, as you saw as Senator Raikes pointed out, this would exempt everybody out until 2012-13. This amendment would just take that date out. With using 2012-13, of the 12 schools it exempts 11 of them except for one. One school would then have 4 hours of a bond to figure out they're going to pay for it. They would have to raise property tax. They would have to do anything...and Senator Raikes and I have talked about it, and he said, you know, we really should hold these schools accountable. And I think we're doing that with the bill. However, they have bonded. They've committed to bonds. I would like to take that date out and put the twelfth school in with the other eleven that we're currently grandfathering in, per se. I think it's important to say, yeah, we found a loophole and we're going to close that loophole. They did do this with permission, per se, because we didn't say they couldn't do it. So I would ask that you adopt AM2588. It would put that twelfth school in with the other eleven, and then support AM2588. And I would yield the rest of my time to Senator Raikes, if he would like it. [LB988]

SENATOR SCHIMEK: Senator Raikes, Senator Langemeier yielded his time. There is about 8 minutes and 12 seconds. [LB988]

SENATOR RAIKES: Thank you, Madam President, and thank you, Senator Langemeier. The issue we face here is possibly one, in homely language, of rewarding bad behavior. I do think there were a number of school districts that looked at this possibility, and decided against it because they felt it was not consistent with the intent of the Legislature; did not do it. You run the risk, of course, of rewarding those that

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potentially or possibly didn't see it that way; decided it was a loophole and we're going to take advantage of it. Senator Langemeier opts in favor...all right, let's give him enough time to let this run out. His provision or his amendment would make forgiveness, if you will, a little bit more generous than what is in the amendment I offered. I am, as you may know, not comfortable with forgiveness, but in this particular case I am going to bend, so I am supporting Senator Langemeier's amendment. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes and Langemeier. Senator Langemeier, your light is next. He waives. Senator Wallman, you are next in order. [LB988]

SENATOR WALLMAN: Would Senator Raikes yield to a question? [LB988]

SENATOR SCHIMEK: Senator Raikes, would you yield? [LB988]

SENATOR RAIKES: Yes, [LB988]

SENATOR WALLMAN: Thank you, Senator. This here, I realize they did some of this outside the lid. Was it mainly insurance issues that you're thinking about here? [LB988]

SENATOR RAIKES: I think that's right, Senator. I didn't bother to look at in detail, but, yes, my understanding is that it is medical insurance, liability insurance, those sorts of things. [LB988]

SENATOR WALLMAN: Not for board members, is it? [LB988]

SENATOR RAIKES: I don't know about that but I think not. [LB988]

SENATOR WALLMAN: Okay. (Laugh) Well, I just wanted to know. I agree with Senator Langemeier that maybe they did pass this perfectly legal, I guess, and so I would have to support this amendment. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senators Wallman and Raikes. The Chair recognizes Senator Pirsch. [LB988]

SENATOR PIRSCH: Thank you, Madam President and members of the body. I was wondering if Senator Langemeier would yield to a quick question--clarification? [LB988]

SENATOR SCHIMEK: Senator Langemeier? [LB988]

SENATOR LANGEMEIER: Yes. [LB988]

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SENATOR PIRSCH: So currently as written, Senator Raikes' amendment, AM2585 would say that taxes levied by an educational service unit or a school district prior to fiscal year 2012-13 for the payment of the...so it applies to those made before 2012 or 2013, is that correct? [LB988]

SENATOR LANGEMEIER: Correct. There's 20 schools and ESU units, total, and if I look down the maturity date of their bonds, they expire in 2008, 2012, '12, '12, '13, '12, '08, '12, '10, except for Cedar Bluffs...thank you...except for Cedar Bluffs expires in 2018. So if we don't exempt them with this amendment, they have to come up with \$247,000 for years '13-14, '14-15, up to 2018. That's a pretty significant hit in their budget. Where do they come up with it? [LB988]

SENATOR PIRSCH: Okay. [LB988]

SENATOR LANGEMEIER: And so what I'm asking is, is we're going to...we extended the dates, and I voted this out of committee...we extended those dates out to '12 and '13, except I didn't know it at the time, I learned of it earlier, there's still one we would catch, so I'm asking to let's treat all 12 the same. [LB988]

SENATOR PIRSCH: Okay. I appreciate that. And just one final question. They were all, you believe, operating in good faith at the time, believing they had the power? [LB988]

SENATOR LANGEMEIER: I believe so. [LB988]

SENATOR PIRSCH: Okay. Thank you. That's all I have. [LB988]

SENATOR SCHIMEK: Thank you, Senators Pirsch and Langemeier. We are on debate of the amendment to AM2585. Seeing no further lights, Senator Langemeier, would you like to close? He waives closing. The question is the adoption of AM2588 to AM2585. All in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 30 ayes, 0 nays, on the adoption of Senator Langemeier's amendment to the amendment. [LB988]

SENATOR SCHIMEK: The amendment to the amendment is adopted. We are now back to discussion of the Raikes' amendment, AM2585. Seeing no lights, Senator Raikes waives on the closing, and the question is the adoption of AM2585. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 34 ayes, 1 nay, on the adoption of Senator Raikes' amendment. [LB988]

SENATOR SCHIMEK: The amendment is adopted. Mr. Clerk, next. [LB988]

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ASSISTANT CLERK: Senator Raikes would offer AM2507. (Legislative Journal pages 1137-1138.) [LB988]

SENATOR SCHIMEK: Senator Raikes. [LB988]

SENATOR RAIKES: Thank you, Madam President and members. I can be very quick I hope here, although I want you to understand what we're doing. Legal expenses for school districts is an issue that we discussed before this year, you may remember. This particular proposal does the following. It says that legal expenses of more than .15 percent of the GFOE for a school district would not count in GFOE for purposes of determining the need, formula need for state aid calculations, .15 percent--Let me give you a little perspective on that. The highest legal expenses are .9 percent. The average is .29 percent. The average of the single highest...or excluding the single highest district is .14 percent. Keep in mind this would do nothing to inhibit a school district's opportunity to pursue legal services. What it would do is it would prevent atypical legal expenses from otherwise...from causing spikes in the aid or the expenditures for purposes of the comparison groups in LB988. So this is a provision that is...tends to be controlling in terms of the increases in needs in the state aid calculations. It is not a provision that would inhibit or restrict a school district from pursuing needed legal expenses. Again, questions I'll happily try to address. I would urge your support. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. You've heard the opening on AM2507. The first in line to speak is Senator Engel. [LB988]

SENATOR ENGEL: Madam President and members of the body, I'd just like to ask Senator Raikes a question to clarify what he just said, like if you have a small district and they have a huge lawsuit, are you saying they could still get the aid for that; it just wouldn't be in their base, so to speak. Is that what you're talking about? [LB988]

SENATOR SCHIMEK: Senator Raikes. [LB988]

SENATOR RAIKES: Senator, what I am saying is that they would operate in the same fashion they now do in such a situation. They would secure and pay for whatever legal advice using the financial resources they have available. The only thing that would change, when you use the expenditures of that school district in the comparison group to calculate needs for state aid, as we do under LB988, legal expenses for that school district in excess of .15 percent of GFOE would be excluded in that needs calculation...or for that needs calculation. [LB988]

SENATOR ENGEL: So it would not affect them in any other way then, right? [LB988]

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SENATOR RAIKES: That's correct. It would not. [LB988]

SENATOR ENGEL: Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senators Engel and Raikes. Senator Ashford, you are recognized to speak. Senator Ashford waives. We are on discussion on AM2507. Senator Kopplin. [LB988]

SENATOR KOPPLIN: Thank you, Madam President. I'd like to ask Senator Ashford a question. [LB988]

SENATOR SCHIMEK: Senator Ashford, would you yield to a question? [LB988]

SENATOR ASHFORD: Yes. [LB988]

SENATOR KOPPLIN: Do you understand how this works? [LB988]

SENATOR ASHFORD: No. [LB988]

SENATOR KOPPLIN: Neither do I. [LB988]

SENATOR ASHFORD: No, I'm kidding. Yeah, I do actually. [LB988]

SENATOR KOPPLIN: Okay. Tell me. [LB988]

SENATOR ASHFORD: Oh. (Laugh) Right now? (Laughter) [LB988]

SENATOR KOPPLIN: Yes. (Laughter) Never mind. [LB988]

SENATOR ASHFORD: Okay. Thank you. [LB988]

SENATOR KOPPLIN: Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senators Kopplin and Ashford. (Laugh) Senator Wallman, your light is next. [LB988]

SENATOR WALLMAN: Thank you, Madam President. I would like to see if Senator Lathrop would yield to a question. [LB988]

SENATOR SCHIMEK: Senator Lathrop, would you yield? [LB988]

SENATOR LATHROP: Yes. [LB988]

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SENATOR WALLMAN: If you were a school board president, would you want that kind of restrictions on your board? [LB988]

SENATOR LATHROP: Well, I can see that the concern that Senator Raikes' amendment brings forward, but I also think that all litigation involving schools isn't necessarily the kind that we've experienced most recently. There could be good solid reasons for spending every bit of those fees on attorneys to defend the school district, so. But at the same time it's about the financing and the financing the schools, and so I guess I can accept the limitation. [LB988]

SENATOR WALLMAN: Thank you, Senator. And I agree, we have to be careful here, I think. You know, like Oakland up here a couple years, a number of years back, had a bad school bus accident, and that took tremendous legal fees, and it wasn't even the school bus driver's fault, so the board resigned and the superintendent resigned. So when we put restrictions on things I guess we have to be a little bit careful. And thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senators Wallman and Lathrop. We are on discussion of AM2507. Seeing no further lights, Senator Raikes, would you like to close on your amendment? [LB988]

SENATOR RAIKES: Thank you, Madam President, members of the Legislature. Let me reemphasize. I know that it's almost instinctive to believe that this sort of a provision is going to restrict a school district's access to legal resources in what may be very legitimate...a situation in which such services are absolutely legitimate. It will not do that. This is simply a provision that modifies the expenditure numbers as they go into the calculation of the needs formula. So again I hope I've made that clear, and I do ask your support. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. You have heard the closing on AM2507. The question is the adoption of the amendment to LB988. All in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 26 ayes, 6 nays, on the adoption of Senator Raikes' amendment. [LB988]

SENATOR SCHIMEK: The amendment is adopted. The next item, Mr. Clerk. [LB988]

ASSISTANT CLERK: Madam President, Senator Friend would offer AM2431. (Legislative Journal page 1085.) [LB988]

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Friend, to open on your

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amendment. [LB988]

SENATOR FRIEND: Thank you, Madam President and members of the Legislature. AM2431 is Senator Ron Raikes' bill, LB977. If you'll look on your gadget you'll be able to look at the committee amendment and all the details therein. The bill came out of committee on a 7 to 0 vote, one member being absent, and there was actually no opposition to the bill, and one member testifying in a neutral capacity. Here's the situation quickly, and I'll try to be brief. Senator Raikes and I, this summer, on a couple of occasions got a chance to sit down with some constituents of both of ours. One of them actually lives in my district, the other I believe lives in...one of the other people lives in his district. They own property up near or around Lynch. The conflict occurred or the situation occurred when and began with the dissolution of the Lynch and Niobrara unification that occurred in 2001. The system...the school system received incentives of \$531,000, and the unification moved Niobrara into the sparse cost grouping. The system ultimately dissolved in February 2004 because Niobrara was the district asking to withdraw. They were held responsible for paying incentives. In addition, a judgment was rendered in the amount of, I believe, over a million dollars--\$1.5 million maybe--plus interest against the unified system in favor of the Lynch school district, with the judgment to be paid by Lynch property taxpayers. Okay, here's the punch line. It's not really very funny. The taxpayers of the districts were not individual parties to the action and therefore didn't have standing to appeal. Because the judgments were outside of the levy limits, Lynch accessed \$367,000 of the judgment to levy a total of \$1.62 for the school year, without going to an override vote and risking any freeholding. In other words, with the levy cap at about \$1.05, Lynch is now at \$1.62, and that's without a vote of the people to authorize that levy. By the way, \$905,000, I believe, something in that nature, pretty close to that, would still be available to be outside the levy limit for next year, leaving a potential levy of \$2.38 that they wouldn't have to have a vote of the people for. Why is a city slicker from northwest Omaha carrying a freeholder bill? Like I said, I have a constituent who owns land up there. He grew up in Lynch, loves the area, still works up there. This is a Senator Raikes' bill. I carried it because I feel strongly that this is kind of a very, very strange situation, to say the least. I would give the remainder of my time to Senator Raikes if he would like to further explain the situation. [LB988 LB977]

SENATOR SCHIMEK: Senator Raikes, you have the remainder of this time if you would like. There is about 6 minutes and 25 seconds. [LB988]

SENATOR RAIKES: Thank you, Madam President, and thank you, Senator Friend. I think Senator Friend has outlined the situation well. It, as he explained, was a situation that involved a district court settlement of the breakup of unification. The result of it was one district was awarded authority to tax its residents, I believe \$1.5 million. And give that opportunity, the levy is now, as he mentioned, \$1.62. This particular bill limits what a school district can do in that situation through an expansion of the freeholding

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provision. I do think it's a situation that needs addressing. My concern is that I'm not sure we've got the time right now to fully explore it, but I will yield to Senator Friend on that. Senator. [LB988]

SENATOR SCHIMEK: Senator Raikes, who did you yield to? [LB988]

SENATOR RAIKES: Senator Friend. [LB988]

SENATOR SCHIMEK: Oh, thank you. Senator Friend. [LB988]

SENATOR FRIEND: Thank you, Madam President. How much time left in the opening? [LB988]

SENATOR SCHIMEK: About 5 minutes. [LB988]

SENATOR FRIEND: Okay, thank you. What the bill does...thank you, Senator Raikes...what the bill does, it's a proposal that would allow transfers of land out of any class of school district to a contiguous district if the original district has approved a budget that will cause the combined levies to exceed the greater of \$1.20 or the maximum levy authorized by a vote. Look, maybe Senator Raikes is right. I don't know how...if we're at a point in the evening where this is difficult subject matter to grasp. I don't think so. You know, short of closing a prison a few years ago, I really haven't seen anything that we've done that we can't grasp at 8:00 at night. Now, maybe we haven't done an excellent job yet with the time allotted, playing tag or playing yield and yield, Senator Raikes and I, but we're trying to lay some parameters, not only for the situation up at Lynch, but that could possibly be what I would say palatable to other people around the state that could run into the same issue or issues. I'd be happy to answer any questions. I think Senator Raikes--I don't know if he's got all the data and information in front of him--I'd be happy to answer any questions about this subject matter. And with that, Madam President, I believe that's it at this point. [LB988]

SENATOR SCHIMEK: Thank you, Senators Friend and Raikes. The first speaker is Senator Lautenbaugh. Senator. [LB988]

SENATOR LAUTENBAUGH: Thank you, Madam Chair, members of the body. In the sake of brevity I'll stick to the spirit of the brevity, I guess. I had heard of this situation, as well, and I do rise in support of this. I think this makes good sense. It's a good way to address the problem, and I think Senator Friend ably described it and I won't belabor the point, but I think it's good policy. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator. Senator Fischer, you are recognized. [LB988]

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SENATOR FISCHER: Thank you, Madam President and members. The Lynch school district is in my legislative district. And from my understanding of the situation, they are doing what the court has allowed them to do. There have been complaints, as Senator Friend said, that if you look at the committee statement...is there a committee statement on this bill? But if you look at the committee statement, you'll see that the people that came and spoke in favor of the bill are not residents of that district. Do we need to do something in this case? Yes, probably. I don't know if this is it, because I believe there are other districts that could be affected by action that we take in trying to right what is a perceived wrong of one district. And with that I'd like to ask if Senator Raikes would yield to a question, please? [LB988]

SENATOR SCHIMEK: Senator Raikes, would you yield to a question? [LB988]

SENATOR RAIKES: Yes. [LB988]

SENATOR FISCHER: Senator Raikes, I've heard some concerns from another district, that they believe if this bill is passed they could be affected and lose some of their land, which means they lose valuation and they lose the ability to get revenue to run their school and provide education to the students in that district--and that district is Broken Bow. We had a previous amendment, your amendment with Senator Langemeier's amendment to that amendment that addressed that situation, and that's where these districts bonded for insurance. And Broken Bow was one of those districts, and their levy is now, I believe, at \$1.20, so they would be one of the districts that would be affected by what we do on Senator Friend's amendment. Is that true, and if so could you clarify that please? [LB988]

SENATOR RAIKES: I'll try, Senator Fischer. Thanks for the opportunity. There are, I think, currently four school districts in the state that are levying more than \$1.20 for an operating levy--\$1.20 or more, I should say--without a vote of the people--an override, that sort of a thing--so those four could potentially be impacted. But keep in mind, this bill or this amendment, Senator Friend's amendment, is very much in the spirit of freeholding. And the spirit of freeholding is to put up a sign and say, don't go beyond this point, with plenty of warning, because if you do go beyond this point there will be bad repercussions. This amendment is no different. This amendment provides an opportunity for a school district to verify that in the year, the upcoming year, they will not levy more than 15 cents above the levy lid without a vote of the people. If they...that protects them from freeholding in that year, and as long as they honor the agreement they are protected thenceforward. The idea here is not to trigger freeholding, if you will, but simply to make it clear that this is not a practice which is to be endorsed, and in fact it is one to be avoided. So I think even though you have some school districts that could potentially be impacted, there is absolutely no reason that they would be impacted. [LB988]

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SENATOR FISCHER: Can you tell me, Senator Raikes, is freeholding a common practice? [LB988]

SENATOR RAIKES: Actually, Senator, it's a good question, because it had not been a common practice for years. It's been in the statute for I don't know how long. There was never, as far as I know, an instance in which it did happen. A couple years ago it did happen, and I remember we had a bill from Senator Dierks... [LB988]

SENATOR SCHIMEK: One minute. [LB988]

SENATOR RAIKES: ...that spelled out how it would be carried out. Because even though it had been in statute for years, there had never been an instance where it actually happened. And his bill was needed so that we could...excuse me. [LB988]

SENATOR FISCHER: There was a situation, I remember reading in the paper, was it last year, Senator, or the year before with the school district at Wynot? Is that correct? And they lost a great deal of their property in that district because of freeholding practices out of that. So this...I guess my point is, yes, there is a situation in the Lynch school district. There are people on both sides of that. But I think we need to understand not only that situation but the ramifications that this amendment can have to other districts that are not even involved in that. So thank you very much. [LB988]

SENATOR SCHIMEK: Thank you, Senators Fisher and Raikes. Before moving on to the next speaker, the Speaker would like me to announce that the agendas are up for tomorrow and you can pull it up on your little handy gadgets, so. Senator Raikes, you are next to speak. [LB988]

SENATOR RAIKES: Thank you, Madam President, members of the Legislature. Let me continue to respond a little bit to the points that Senator Fischer raised. The current freeholding provisions by which Wynot was impacted are the ones that have been there for a long time. If you have students, fewer than 60 students in the high school for two consecutive years; you are fewer than 15 miles on a paved road from another school district; and you vote and pass an override, then you are subjected to freeholding. In Wynot's case, I can't explain to you exactly why they chose to do what they did, but they clearly met the first two requirements for freeholding. I think everybody knew that was the case, but yet they went ahead and voted and passed an override which then triggered freeholding. There were a couple other districts...Prague, I believe, is one, and there was one district west of Lincoln, I think, and I can't remember, so there may have been two or three...but again, this was a case where the sign, I think, was very clear: Don't go beyond this line because if you do there will be dire consequences. But yet for reasons I don't fully understand, and they may have been good reasons, they went beyond the line and suffered the consequences. This provision clearly protects school districts who pay attention to where the line is, so to speak. And as long as there is

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not...they have plenty of time to adjust, I would argue, and if there is...as long as they don't continue to levy in excess of 15 over the levy lid without a vote of the people, they will not be subjected to freeholding. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. Senator Dierks, your light is next. [LB988]

SENATOR DIERKS: Thank you, Madam President. I just wanted to put my two bits' worth in concerning the Wynot school district. I'm not sure what their reasoning was either as to why they did that, but I know one of the things that happened was, that we had to correct, that these people were freeholding their land out after the school had established its budget. And so the correction that we had that next year was to establish a budget that the freeholding couldn't take place after the budget had been established for that school district. That seemed to be the logical thing to do. I did try another bill that same year to change the numbers from 60 down to 50, and change some of the other parameters, distance, from 50 miles to 20 miles, and that bill didn't get out of the committee. But I thought that you might be interested in knowing that I don't know really what the reason for their going over it was. I guess they just needed it to get their school functioning. And so it did cause a great deal of havoc up there, and...but we were able to straighten out part of it by saying, you know, once these school districts get their budget established then you can't do freeholding out of it. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Dierks. Senator Chambers, you're recognized to speak. [LB988]

SENATOR CHAMBERS: Thank you. Madam President and members of the Legislature, I have a question of Senator Friend. [LB988]

SENATOR SCHIMEK: Senator Friend, would you yield to a question? [LB988]

SENATOR FRIEND: Yes, will. [LB988]

SENATOR CHAMBERS: Senator Friend, I don't have my glasses on right now. Is that your name up there on the board? [LB988]

SENATOR FRIEND: The name below the Select File and Raikes. [LB988]

SENATOR CHAMBERS: Below Raikes? [LB988]

SENATOR FRIEND: Yes, that's mine. [LB988]

SENATOR CHAMBERS: If we drop the R from that name, what would remain? [LB988]

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SENATOR FRIEND: Fiend. [LB988]

SENATOR CHAMBERS: Fiend, you said? [LB988]

SENATOR FRIEND: Fiend. [LB988]

SENATOR CHAMBERS: Well-stated. Thank you, Madam President. [LB988]

SENATOR SCHIMEK: Thank you, Senator Chambers. We are on discussion of AM2431. Seeing no further lights, Senator Friend, you are recognized to close on your amendment. [LB988]

SENATOR FRIEND: Just to say...thank you, Madam President...just to say thank you again for the time. I'm not closing any prisons. I'm not the type of fiend that you all think I am. This is...members, finally, this is a...to me, it's an incentive for certain school districts, and maybe all school districts, to monitor appropriately. And their parameters, you know, added parameters, incentives to freehold, I don't know if I buy that. I agree with Senator Raikes. At a \$1.20 and the parameters that we've created, I think it's pretty responsible legislation. With that I would ask for the adoption of AM2431. [LB988]

SENATOR SCHIMEK: The question is the adoption of AM2431 to LB988. All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 25 ayes, 3 nays, on the adoption of Senator Friend's amendment. [LB988]

SENATOR SCHIMEK: The amendment is adopted. Are there...? [LB988]

ASSISTANT CLERK: Madam President, I have nothing further pending on the bill. [LB988]

SENATOR SCHIMEK: Senator McGill for a motion. [LB988]

SENATOR MCGILL: Madam President, I move LB988 to E&R for engrossing. [LB988]

SENATOR SCHIMEK: You have heard the motion. Senator Chambers, you wish to speak on the motion? [LB988]

SENATOR CHAMBERS: Madam President and members of the Legislature, I'd like to say a word or two in behalf of LB988. Thank you. [LB988]

SENATOR SCHIMEK: Thank you, Senator Chambers. Senator Chambers, did you just turn your light on again? Thank you. Seeing no further lights then, the question is, the

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advancement of LB988 to E&R Engrossing. All of those in favor say aye. All opposed say nay. It would be a machine vote; Senator Dierks, I believe. [LB988]

SENATOR DIERKS: Please. [LB988]

SENATOR SCHIMEK: The question is the advancement to E&R Engrossing of LB988. All in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB988]

ASSISTANT CLERK: 28 ayes, 12 nays, on the advancement of the bill, Madam President. [LB988]

SENATOR SCHIMEK: The bill does advance. Are there items for the record? Oh, I'm sorry. Mr. Clerk. [LB988]

ASSISTANT CLERK: Madam President, with respect to LB988A, I have no E&R amendments. Senator Raikes would move to amend with AM2567. (Legislative Journal page 1138.) [LB988A]

SENATOR SCHIMEK: Senator Raikes, you are recognized to open on your amendment to LB988A. [LB988A]

SENATOR RAIKES: Thank you, Madam President and members. This amendment to LB988A simply make the A bill compatible with the amendments we adopted in LB988, so I urge your support. Thank you. [LB988A LB988]

SENATOR SCHIMEK: Thank you, Senator Raikes. You've heard the opening. Is there discussion on the amendment? Senator Wallman, you are recognized. [LB988A]

SENATOR WALLMAN: Thank you, Madam President. I'd like to ask Ron Raikes a question, please; Senator Raikes. [LB988A]

SENATOR SCHIMEK: Senator Raikes, would you yield to a question? [LB988A]

SENATOR RAIKES: Yes. [LB988A]

SENATOR WALLMAN: Thank you. Is freeholder the same as freeloader? [LB988A]

SENATOR RAIKES: I don't think so, at least not in school statute. [LB988A]

SENATOR WALLMAN: Thank you. Thank you, Madam President. [LB988A]

SENATOR SCHIMEK: Thank you, Senator Wallman and Senator Raikes. Seeing no

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further lights, Senator Raikes to close on your amendment. Senator Raikes waives closing. The question is the adoption of AM2567 to LB988A. All in favor vote aye; all opposed vote nay. Have you all voted who wish to vote? Record, Mr. Clerk. [LB988A]

ASSISTANT CLERK: 32 ayes, 0 nays, on the adoption of Senator Raikes' amendment. [LB988A]

SENATOR SCHIMEK: The amendment is adopted. We are now back to the bill. Is there any discussion? Senator McGill for a motion. [LB988A]

SENATOR MCGILL: Madam President, I move LB988A to E&R for engrossing. [LB988A]

SENATOR SCHIMEK: Thank you, Senator McGill. You've heard the motion. The question is the advancement of LB988A to E&R Engrossing. All in favor say aye. All opposed, nay. The ayes have it and the bill does advance. Items for the record, Mr. Clerk. [LB988A]

ASSISTANT CLERK: Thank you, Madam President. Your Committee on Enrollment and Review reports LB1154, LB736, and LB895 to Select File. An amendment to be printed to LB765 by Senator Erdman. A new A bill, LB983A by Senator Cornett. (Read title for the first time.) An amendment to LB1055 by Senator Cornett. A name add: Senator Lautenbaugh added his name to LB920. (Legislative Journal pages 1138-1143.) [LB1154 LB736 LB895 LB765 LB983A LB1055 LB920]

And a priority motion: Senator Lathrop would move to adjourn until Friday, March 28, 2008, at 9:00 a.m.

SENATOR SCHIMEK: You have heard the motion to adjourn. All in favor say aye. All opposed say nay. The ayes have it. We are adjourned.