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Floor Debate
March 28, 2008

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PRESIDENT SHEEHY PRESIDING []

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-ninth day of the One Hundredth Legislature, Second Session. Our chaplain for today is Pastor Jim Miller from Grace United Methodist Church in Hastings, Nebraska, Senator Burling's district. Would you all please rise? []

PASTOR MILLER: (Prayer offered.) []

PRESIDENT SHEEHY: Thank you, Pastor Miller. I call to order the forty-ninth day of the One Hundredth Legislature, Second Session. Senators, please record your presence by roll call. Please record, Mr. Clerk. []

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

PRESIDENT SHEEHY: Are there corrections for the Journal? []

ASSISTANT CLERK: I have no corrections this morning. []

PRESIDENT SHEEHY: Messages, reports, or announcements? []

ASSISTANT CLERK: Two items, Mr. President: I have a report of registered lobbyists for the current week, and the Executive Board reports LR283 to the full Legislature for further consideration. (Legislative Journal pages 1145-1147.) [LR283]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will proceed to legislative confirmation reports. [LR283]

ASSISTANT CLERK: Mr. President, the first report is from the Transportation and Telecommunications Committee relating to Ralph Holzfaster to the Nebraska Railway Council. (Legislative Journal page 1097.) []

PRESIDENT SHEEHY: Senator Fischer, you're recognized to open on the Transportation and Telecommunications Committee's confirmation report. []

SENATOR FISCHER: Thank you, Mr. President and members of the body. The

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Transportation and Telecommunications Committee held a confirmation hearing on Wednesday, March 26, for the appointment of Ralph Holzfaster to the Nebraska Railway Council. The Nebraska Railway Council administers programs and funds for the acquisition, rehabilitation and operation of light-density rail lines pursuant to state law and the federal rail revitalization act. All planning functions for participation in the federal act must be performed by a state agency designated by the Governor. Although the council is an independent body, the Department of Roads provides planning functions and staff support. Eight council members are appointed to four-year terms by the Governor and approved by this body. Mr. Holzfaster was appointed to fill an unexpired term. His term will run from February 26, 2008, to July 19, 2010. The Department of Roads director serves as an ex-officio member. Council members consist of a light-density rail shipper, a railroad management employee, a Public Service Commissioner, a railroad maintenance of way employee, a Department of Economic Development representative, a Department of Agriculture representative, and two members of the public--one with private or public finance experience, and one with marketing experience. Mr. Holzfaster's appointment will fill the general public opening of the council. Mr. Holzfaster attended Regis College in Denver, Colorado, and was a pilot in the U.S. Air Force and a missile launch officer. He is currently in farming with family members of the farm started by his father. His areas of interest include agriculture, economic development, environment, government, roads, and transportation. Mr. Holzfaster did attend the hearing and Senator Erdman also testified at the hearing in support of him. The Transportation and Telecommunications Committee recommends this confirmation with 7 members in favor and 1 member was absent. Thank you, Mr. President. []

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening on the Transportation and Telecommunications Committee confirmation report. The floor is now open for discussion. Are there members requesting to speak? Seeing none, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is on the adoption of the confirmation report from Transportation and Telecommunications. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. []

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1147-1148.) 30 ayes, 0 nays on the adoption of the report, Mr. President. []

PRESIDENT SHEEHY: The confirmation report is adopted. Next legislative confirmation report. []

ASSISTANT CLERK: Mr. President, the next report is from the Business and Labor Committee relating to Bernard McGinn to the Commission on Industrial Relations. (Legislative Journal page 1119.) []

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PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on the Business and Labor Committee confirmation report. []

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. I stand to speak on the appointment of Judge Bernard J. McGinn to the Commission of Industrial Relations. Judge McGinn appeared before the Business and Labor Committee on Thursday, March 27, 2008, to speak on his appointment to the Commission of Industrial Relations. Several individuals spoke in support of Judge McGinn's appointment and none opposed. The committee was extremely impressed with Judge McGinn and desires to report favorably upon his appointment with a 5 to 0 vote, with 2 senators absent. Judge McGinn is a graduate of both the University of Nebraska at Lincoln and the University of Nebraska College of Law. Following his graduation, he served as a business law instructor at the University of Nebraska at Lincoln and began his distinguished career as deputy county attorney for the Lancaster County. In 1976, he was promoted to the position of chief deputy county attorney in Lancaster County until 1981. At that time, Judge McGinn began serving the state of Nebraska as a Lancaster County district judge, which he maintained for 23 years. Judge McGinn retired October 2005, but is ready and willing to serve the citizens of this state again as commissioner for the CIR. Since his appointment, the committee has learned from several individuals from all different parties that Judge McGinn is an honorable, honest and fair man. I am confident that he will serve on the CIR with distinction. Personally, I want to make one final comment. I would like to thank the Governor for his thoughtful and wise appointment of Judge McGinn to the Commission of Industrial Relations and I would urge the body to please vote green for the appointment of Judge McGinn to the Commission of Industrial Relations. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to the legislative confirmation report from the Business and Labor Committee. The floor is now open for discussion. Members requesting to speak, Senator Lathrop, you're recognized. []

SENATOR LATHROP: Thank you, Mr. President and colleagues. I do want to remark on the confirmation of Judge McGinn, first by complimenting the Governor on the nomination of Judge McGinn and also to...who is eminently qualified, but also to thank Judge McGinn. This is a fellow who has distinguished himself on the district court in Lancaster County. All of the lawyers that I've spoken to in Lancaster County had nothing but great things to say about Judge McGinn. He served our state on the district court bench, retired, and was asked by the Governor to come out of retirement to work on the Court of Industrial Relations. And I want him to know that the people of Nebraska appreciate his willingness to come back and serve the people once again in this capacity. I wholeheartedly support his confirmation. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Chambers, you are

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recognized. []

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I echo what Senator Lathrop said and were my memory as good as it was at one time I would repeat it, but since I don't have to do that I will say ditto. And I do give the Governor credit for having made this appointment. And former Judge McGinn is a man of integrity. He is a man of courage and principle. There's a particular decision he entered while on the bench, which I will not go into at this point, but if I had any doubts about the man, which I didn't, that decision would have removed them all. The reason I was absent was because we were attending another hearing and Executive Session. I did happen to see Judge McGinn as he was leaving and I told him of my support and why I was not able to attend that hearing, but I'm glad that I'm able to be here this morning and vote in favor of his confirmation. Thank you. []

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Cornett, seeing no other lights on, you're recognized to close. Senator Cornett waives closing. The question before the body is on the adoption of the legislative confirmation report from the Business and Labor Committee. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. []

ASSISTANT CLERK: (Record vote, Legislative Journal pages 1148-1149.) 31 ayes, 1 nay on the adoption of the report, Mr. President. []

PRESIDENT SHEEHY: The confirmation report is adopted. (Visitors introduced.) Mr. Clerk, we'll move to first item under General File. []

ASSISTANT CLERK: Mr. President, LB736A was introduced by Senator Fulton. (Read title.) [LB736A]

PRESIDENT SHEEHY: Senator Fulton, you're recognized to open on LB736A. [LB736A]

SENATOR FULTON: Thank you, Mr. President. Good morning, members. This is the A bill. We passed LB736, the ignition interlock bill, on General File, we passed it on to Select File, and this is the A bill that follows, would appropriate \$36,000 of cash funds to carry out programming within Department of Motor Vehicles. And I ask you to move this forward to Select File. Thank you, Mr. President. [LB736A LB736]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the opening to LB736A. Are there members requesting to speak from the floor? Seeing none, Senator Fulton, you're recognized to close. Senator Fulton waives closing. The question before the body is on the advancement of LB736A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB736A]

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ASSISTANT CLERK: 31 ayes, 0 nays on the advancement of the A bill, Mr. President. [LB736A]

PRESIDENT SHEEHY: LB736A advances. Next item. [LB736A]

ASSISTANT CLERK: Mr. President, LB928A was introduced by Senator Johnson. (Read title.) [LB928A]

PRESIDENT SHEEHY: Senator Johnson, you're recognized to open on LB928A. [LB928A]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor, members of the Legislature. This just catches up the A bill with one of the provisions of LB928. The fiscal note here pertains to the provisions of LB796 that were in as part of LB928. This is the changes in the radiologic control act. What happens here is the University of Nebraska first receives \$34,000 from General Funds over two years for the criminal background checks. They would pay employees and other for increased registration fees. HHS would actually save \$42,000 in General Funds in fiscal year '10 as a result of these increased fees which would replace the General Fund subsidy. And so we end up with an overall savings over the two years of \$8,000. With that report, I'd ask for its acceptance. Thank you. [LB928A LB928 LB796]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You've heard the opening to LB928A. The floor is open for discussion. Are there members requesting to speak? Seeing none, Senator Johnson, you're recognized to close. Senator Johnson waives closing. The question before the body is on the advancement of LB928A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB928A]

ASSISTANT CLERK: 31 ayes, 0 nays on the advancement of the bill, Mr. President. [LB928A]

PRESIDENT SHEEHY: LB928A advances. We'll move to the next item under General File. [LB928A]

ASSISTANT CLERK: Mr. President, LB308A was introduced by Senator Stuthman. (Read title.) [LB308A]

PRESIDENT SHEEHY: Senator Stuthman, you're recognized to open on LB308A. [LB308A]

SENATOR STUTHMAN: Thank you, Mr. Lieutenant Governor and members of the body. LB308A accompanies LB308, it follows that bill. The Department of Health and

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Human Services needs to revise the rules and regulations, and this could possibly be a one-time expenditure of \$7,829 from cash in fiscal year '08. It is my understanding that there is some possibility that this will not be needed, that it's already been taken care of. But in order to make sure of this, we need to have an A bill accompany the LB308. There will be no expenditures for permanent or temporary salaries and per diems for state employees for these funds that are appropriated to this. So I would ask your support in LB308A for these funds. Thank you. [LB308A LB308]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. You have heard the opening to LB308A. The floor is open for discussion. Are there members requesting to speak? Seeing none, Senator Stuthman, you're recognized to close. Senator Stuthman waives closing. The question before the body is on the advancement of LB308A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB308A]

ASSISTANT CLERK: 28 ayes, 0 nays on the advancement of the bill, Mr. President. [LB308A]

PRESIDENT SHEEHY: LB308A advances. Mr. Clerk, we'll move to first item under Select File. [LB308A]

ASSISTANT CLERK: Mr. President, with respect to LB1055, there are E&R amendments. (ER8183, Legislative Journal page 875.) [LB1055]

PRESIDENT SHEEHY: Senator McGill. [LB1055]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1055]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1055]

ASSISTANT CLERK: Mr. President, the first amendment I have is from Senator Cornett. Senator, this is AM2395, and I have a note that you wish to drop this to the bottom of the items for consideration. [LB1055]

SENATOR CORNETT: You can actually withdraw that amendment and if you could hear Senator McDonald's amendment first. [LB1055]

ASSISTANT CLERK: Okay. [LB1055]

PRESIDENT SHEEHY: AM2395 is withdrawn. Next amendment, Mr. Clerk. [LB1055]

ASSISTANT CLERK: Senator McDonald would offer AM2396. (Legislative Journal page 1083.) [LB1055]

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PRESIDENT SHEEHY: Senator McDonald, you're recognized to open on AM2396. [LB1055]

SENATOR McDONALD: Mr. Lieutenant Governor and members of the body, first of all, the Bill Drafters have provided us with a clean version of LB1055 through the E&R amendment, ER8183, so the E&R amendment is now the bill. AM2396, which would amend the E&R amendment, makes some clarification to the bill's definitions and would clarify language in response to some questions raised in General File. The first part of the amendment rewrites the definition of a dangerous dog and simply a rewording of what is already in statute and better reflects the Legislature's intent. This definition section of the bill also provides a defense for a dog that bites a person who is trespassing. The introduced version of LB1055 contained changes that would have allowed an unintentional use of this defense and could have meant a free pass for the dog. This amendment fixes that unintended consequence and clarifies precisely when the defenses apply. The second part of the amendment adds language to the potentially dangerous dog definition in the same section that clarifies what makes a dog potentially dangerous. The new language makes it clear that a dog could be potentially dangerous if unprovoked...excuse me, the new language makes it clear that a dog could potentially be dangerous if unprovoked it injured a person but the injury did not require medical treatment from a licensed healthcare professional. It also clarifies that a dog could be potentially dangerous if it chases or approaches a person on the street, sidewalk or any other public grounds in a menacing fashion or apparent attitude of attack. This language represents the original intent of the Legislature that was not clear in LB1055. Finally, the amendment deletes a reference on page 8, line 11 in Section 54-640 which relates to a commercial breeder's duties. We have learned that the commercial breeder's pen size referred to as too small for humane confinement of a dangerous dog, so it may not be exercised regularly. The outdoor pen requirements in statute and amendment are reasonable, safe, and humane and are appropriate as is. This amendment clarifies language and resolves concerns raised on General File to the satisfaction of those who raise the concerns. I encourage you to support AM2396. We've been working on this bill for some time. We had an interim hearing. We have brought all parties together that have concerns about this bill, thought we had it in the correct form when it went to General File, find out there were still a few questions on the floor. We have worked with everyone that has been concerned about this bill to an amendment that hopefully satisfies everyone's concern. So please support this amendment and put this bill in the correct form to move it to Final Reading. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. You've heard the opening of AM2396 to LB1055. The floor is now open for discussion. Are there 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 AM2396 to LB1055. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

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[LB1055]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of Senator McDonald's amendment. [LB1055]

PRESIDENT SHEEHY: AM2396 is adopted. Next amendment, Mr. Clerk. [LB1055]

ASSISTANT CLERK: Mr. President, Senator Cornett would offer AM2444. (Legislative Journal page 1140.) [LB1055]

PRESIDENT SHEEHY: Senator Cornett, you're recognized to open on AM2444. [LB1055]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. First, I'd like to thank Senator McDonald for allowing me to put this amendment on her priority bill. This amendment is LB769 with a minor change. LB769 was passed out of the Judiciary Committee unanimously. AM2444 adds language to Statute 28-1008, which defines mutilation, repeated beating, torture, and changes a definition of serious injury or illness. Mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed under the Nebraska Veterinary Care Practice Act or conduct that conforms to accepted veterinarian practices. Repeated beating means intentional successive strikes to an animal by a person, resulting in serious bodily injury or death to the animal. Torture means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a veterinarian licensed under the Nebraska Veterinary Practice Act or conduct that conforms to accepted veterinarian practices. The serious injury and illness section would now include broken bones. The intent of AM2444 is to add language which would exclude people convicted of a Class IV felony under Sections 28-1005 or 28-1009 from owning, possessing, or residing with an animal for not less than 15 years from the date of conviction. If a person violated this subdivision, they would be guilty of a Class I misdemeanor. It also adds language to exclude a person convicted of a Class I misdemeanor under subdivision 2(a) of Section 28-1009 or a Class III misdemeanor under Section 28-1010 from owning, possessing, or residing with an animal for not less than five years from the date of conviction. If a person violates this subdivision, they shall be guilty of a Class IV misdemeanor. AM2444 would allow the court to extend the time restrictions if they deem it reasonable and necessary and would also allow for persons who need to possess an animal for health of such person. The change I spoke about earlier comes to address concerns expressed by several senators and the Nebraska Veterinarian Medical Association. We have removed the provision which would allow a person who derived at least 20 percent of their annual income from the sale or resale of animals. To give a brief explanation on top of this where AM2444 came from, we passed a law last year that made certain types of abuse

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to animals a felony. This is basically a clean-up bill in regards to owning animal...restrictions to that bill that we passed last year. I would urge the body to support this bill and would be happy to answer any questions. Thank you. [LB1055 LB769]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the opening to AM2444 to LB1055. The floor is now open for discussion. Members requesting to speak: Senator McDonald, you're recognized. [LB1055]

SENATOR McDONALD: Mr. Attorney General (sic) and members of the body, I do support Senator Cornett's amendment. I heard it in Judiciary Committee. Like she said, it was not controversial; it passed out of the committee clean and she had asked me if it would be appropriate for her to amend this onto my bill, and I said absolutely. So please give her your support with this amendment. I think it will make the clarifications that need to be made in that law that was passed previously. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Fischer, you're recognized. [LB1055]

SENATOR FISCHER: Thank you, Mr. President and members. Would Senator Cornett yield to some questions, please? [LB1055]

PRESIDENT SHEEHY: Senator Cornett, would you yield to questions? [LB1055]

SENATOR CORNETT: Yes. [LB1055]

SENATOR FISCHER: Senator Cornett, I certainly thank you for the amendment and the concern for humane treatment of animals. That's so very important to all of us, I believe, in here. I do have a question, though. Being a rancher, we have brandings of animals which is...I guess it could be classified as a permanent disfigurement since the hide will have a brand on that will be there. Do I need to be concerned about what you're doing here? [LB1055]

SENATOR CORNETT: No, you do not, Senator. Part of what we did when we drafted this bill and the amendment was include accepted veterinarian practices. And we made sure that the language was acceptable with the Cattlemen and there was no opposition to the bill from any farming, ranching, or agricultural group. [LB1055]

SENATOR FISCHER: In your amendment, the new language says that mutilation does not include conduct performed by a veterinarian licensed to practice. Most ranchers do their own brandings. We do not hire vets to come out and brand for us or castrate calves. Are we going to be protected under this? [LB1055]

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SENATOR CORNETT: Yes. That is why, if you look, there is a sentence that says licensed under Nebraska veterinarian practices or conduct that conforms with accepted veterinarian practices. That was to include people involved in husbandry that do their own shots, castration, tail docking, whatever is necessary. That was specifically included to allay the fears of the people that are involved in husbandry in this state. [LB1055]

SENATOR FISCHER: I appreciate that, Senator Cornett. And I believe you just said also that any vaccinations that are given by a rancher, not by a vet, for animal disease control or for animals that are ill and need treatment, that practice is also protected and is not affected by this amendment. Is that true? [LB1055]

SENATOR CORNETT: That is true, Senator Fischer. We worked very hard to make sure that we were not doing anything onerous to our largest industry in the state. [LB1055]

SENATOR FISCHER: Thank you very much. I appreciate that, Senator Cornett, for your clarification. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Thank you, Senator Cornett. Senator Louden, you're recognized. [LB1055]

SENATOR LOUDEN: Thank you, Lieutenant Governor. And I, too, would like to ask Senator Cornett some questions, I guess. [LB1055]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1055]

SENATOR CORNETT: Yes, I would be happy to. [LB1055]

SENATOR LOUDEN: Okay. And it's mostly along the same lines, other than the fact when you have...I have the problem in there where it has licensed veterinarians on some of the mutilations because a lot of people in our areas that...oh, you'll have broken bones on animals and stuff and sometimes they'll have to be amputated, sometimes they'll be cast and there will be other work done. And I was going through your amendment here and I haven't seen...I haven't got a copy of it, but I haven't seen where it really did put aside some of the farm and ranching practices or stuff that can be performed by livestock owners. And I guess I wasn't clear in what part of that amendment that's in. Could you point that out to me, the page number and that sort of thing? [LB1055]

SENATOR CORNETT: I can point it out in the original bill and it is continued in the amendment. I don't have a copy of the amendment in front of me. But in the original bill, it's page 3, Section 2(7), lines 7 through 12. "Mutilation does not include conduct

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performed by a veterinarian licensed under the Nebraska Veterinary Practice Act or conduct that conforms to accepted veterinary practices." That was put there for the Cattlemen. Then if you also look at page 5, Section 4, line 21 (sic), subsection (7): Commonly accepted practices of animal husbandry with respect to farm animals, including their transportation from one location to another, nonnegligent actions taken by a professional (sic) or agents of the Nebraska Agriculture or United States Department of Agriculture in the performance of duties prescribed by law. We added this at the request of the different husbandry groups, including the Nebraska Cattlemen, to make sure that any common husbandry practices were excluded from this bill. [LB1055]

SENATOR LOUDEN: Okay. I thank you for your information, Senator. I will look this over some more. I still have some concern about when you say licensed veterinarian, because in the ranch country there's a lot of people that do a lot of work on their cattle that they're not licensed veterinarians but they've done this work and, with the experience they've had, done quite a lot of it. In fact, some of them used to be able to take courses. You used to be able to go to Colorado State University over there and take a course that would last about a month's time and do some minor surgery and that kind of work on your cattle and on your livestock. So with that, thank you, Mr. President. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Louden. Additional members wishing to speak on AM2444? Senator Dierks, followed by Senator Hansen and Senator Cornett. Senator Dierks, you're recognized. [LB1055]

SENATOR DIERKS: Thank you, Mr. President. I just had been having some conversations with Senator Hansen. We were discussing the fact that we no longer can slaughter horses in this country, humane slaughter. It's not...there's no slaughterhouses, there's no rendering plants. They just are put out to pasture, I guess, until they die a natural death. And I was wondering about putting an amendment on this bill that would allow for the humane slaughter of horses in Nebraska. How would that affect your opinion of the bill, Senator Cornett? [LB1055]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1055]

SENATOR CORNETT: I would not accept that amendment at this time. One, I promised Senator McDonald that I would not do anything to slow up her bill. This bill is a clarification of language of what we did last year. And you can still humanely put a horse down. You cannot send it, in this country, to slaughter for dog food or things like that. But if you have a horse that's injured or permanently lame, you can still put that animal down. And if you look, that is actually included on page 5 of this bill, line 17, commonly accepted practices occurring in conjunction...well, pardon me, line 19: Humane killing of an animal by the owner or his agent or veterinarian upon the owner's request. You can

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still put an animal down. The owner can put an animal down. That we worked on excluding from this bill also. [LB1055]

SENATOR DIERKS: Yeah. Well, thank you. I guess maybe I should have been asking Senator McDonald that question. There is no humane slaughter of horses available now in this country. I guess that veterinarians can put them to sleep and then I guess they get buried on the ranch. But the thing that's happened is there's thousands of horses in this nation that cannot be slaughtered. They cannot...they don't even have a rendering plant for them. So what are we supposed to do with them? They aren't worth very much either right now. I guess you might figure that out. But I'm just posing the question. I thought that...you're talking about humane acts here and acts by veterinarians, and this would...I'm talking about some humane manner of taking care of the thousands of horses in this country that they don't have a way to take care of today. With that, I'll just turn my time over back to the Chair. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Hansen, you're recognized. [LB1055]

SENATOR HANSEN: Mr. President, I just want to make a quick comment to the body and to Senator Cornett. I appreciate her bringing this amendment and clarifying the amendment that veterinary practices can be done by the owners of the livestock, as long as they're done in a humane way. There are groups in the state that have started a program called the Beef Quality Assurance program. And we spend hours and hours and hours trying to educate anyone who raises livestock, and especially beef animals, that there are good ways to do things and there are some ways that aren't so good. It all goes down to we want to have safe, humanely raised animals in our state. And I think we're doing that. I think we're doing the educational process and I do thank Senator Cornett again for explaining and clarifying that point. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Hansen. Senator Cornett, followed by Senator Erdman. Senator Cornett, you're recognized. [LB1055]

SENATOR CORNETT: Yes. I just want to clarify to the body that what this bill primarily does is clarify language of a bill that we passed last year and puts an ownership restriction on people that were convicted...are convicted of a felony or a misdemeanor cruelty. It further defines what that is and also clarifies that this does not include veterinarian practices or common husbandry practices. We did that to reassure the Cattlemen. And there is also a section in this bill to alleviate fears that if someone's income is more than 20 percent generated by husbandry, even if they are convicted this bill does not apply to them. I urge the body's support. This is clean-up language and clarification of a bill we did last year. And again, I thank Senator McDonald for allowing me to put it on her bill. Thank you very much. [LB1055]

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PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Erdman, you're recognized. [LB1055]

SENATOR ERDMAN: Mr. President, would Senator Cornett yield to a question? [LB1055]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1055]

SENATOR CORNETT: Yes, I would. [LB1055]

SENATOR ERDMAN: Can you, Senator Cornett, can you give me the reference of that last point that you made about the 20 percent income and where I find that in your amendment, or is that in the underlying bill? [LB1055]

SENATOR CORNETT: That is in the amendment and I can get that for you. I just need to pull the amendment up. [LB1055]

SENATOR ERDMAN: All right. I'll go ahead and talk and by the time we're done here, hopefully you'll have that. [LB1055]

SENATOR CORNETT: Okay, I got it. [LB1055]

SENATOR ERDMAN: Maybe you'll have that before then. (Laugh) Go ahead. [LB1055]

SENATOR CORNETT: I apologize, Senator Erdman. That is something that we took out that wasn't...we've had two separate amendments and I spoke incorrectly. The 20 percent has been taken out. The Cattlemen did not oppose that, so we removed that language from this amendment. It was in the first amendment. I apologize; I misspoke. [LB1055]

SENATOR ERDMAN: Okay. And I didn't see it, either. I just wanted to make sure that I hadn't missed it. [LB1055]

SENATOR CORNETT: No, you were correct, sir. [LB1055]

SENATOR ERDMAN: Okay. I think it's important to realize--this is not specific to Senator Cornett's bill, but it goes along the lines of what Senator Dierks had said earlier--there are public policies that are placed upon certain segments that affect more than just the intended goal. And as we all know, there are unintended consequences. One of the things that we have seen in America since Congress has passed the ban on horse slaughter is that we have seen a 33 percent increase in live horse exports to Mexico--33 percent. We have also seen, as you visited and have I been to a number of

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ag conferences with ag senators from across the country, you're starting to see people abandoning their livestock, their horses on public property. And it's because there's no humane way to handle the situation. And ironically, this is just a pure observation, ironically the people that are proposing and pushing that legislation are the same people that euthanize animals. They use it to euthanize cats and dogs and they say it's not humane for them to wander around publicly, it's not humane for them to be treated the way that they are, having no care. But because of the public policies that they promote at the national level, that is the exact result of what's going on in the livestock industry and specifically in horses. It has nothing to do really with Senator Cornett's amendment. But the reality is, is that you have to be careful about what happens at the national level and what happens at the state level. And ultimately it comes down to a lack of understanding about the way that individuals care for the animals that they have and, most importantly, the responsibility that they feel to ensuring that they've been taken care of. And last I checked, there's one horse sanctuary in the country and you can't get a horse in there if you wanted to, to be able to have it be taken care of humanely. So it's an interesting conversation. I appreciate Senator Cornett's clarification. I thank Senator Hansen and Senator Dierks for bringing this issue up. Senator Cornett, I don't believe I have any concerns with your amendment but I thought that was important to also have on the record. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Nelson, followed by Senator Cornett. Senator Nelson, you're recognized. [LB1055]

SENATOR NELSON: Thank you, Mr. President, members of the body. Will Senator Cornett entertain a question or two? [LB1055]

PRESIDENT SHEEHY: Senator Cornett, would you yield? [LB1055]

SENATOR CORNETT: I would be happy to. [LB1055]

SENATOR NELSON: Senator Cornett, I really had no idea this amendment was coming up at this time, and that's my fault. But referring to page 3, Section 3, starting with line 9, how does that provision there prohibiting someone from owning an animal for not less than 15 years and later on for not less than 5 years, how is this changing what was in LB769, if you recall? [LB1055 LB769]

SENATOR CORNETT: We passed LB769 last year and that...LB277 (sic), pardon me. Are you referring to the bill this year or... [LB1055 LB769]

SENATOR NELSON: I'm referring to the amendment here that you have, AM2444, which you say was, as I understood it, was cleaning up things in LB769. [LB1055 LB769]

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SENATOR CORNETT: No, no, no. LB769 was the bill we introduced this year. [LB1055 LB769]

SENATOR NELSON: This year, okay. [LB1055]

SENATOR CORNETT: This year. Last year we passed a bill that made certain types of cruelty in the state of Nebraska a felony. With that, we needed to come back this year and do some clean-up language and further define what cruelty constituted, and secondly, to impose ownership restrictions of people that were convicted under that law that we passed last year. [LB1055]

SENATOR NELSON: So with these sections here you are imposing those, do I understand... [LB1055]

SENATOR CORNETT: Correct. Last year we enacted a law that made certain types of cruelty a felony. This year we are cleaning up the definition of what the cruelty is and, secondly, imposing ownership restrictions on people that were convicted of a felony excluding people that need to have a service dog. So say for instance you have been convicted of a felony under last year's legislation but you need a service dog if you become visually impaired or hearing impaired, you can still own a service dog. You're exempted from this. [LB1055]

SENATOR NELSON: All right. When this text says, shall not own, possess, or reside with any animal for not less than 15 years, are we confining that to dogs or does that... [LB1055]

SENATOR CORNETT: No, that's any animal. I was just using dogs as an example. [LB1055]

SENATOR NELSON: You know, I don't live on a ranch or anything, but if someone has horses and they might be convicted of a felony for abusing a dog or something like that, then we're saying they can't have horses anymore? [LB1055]

SENATOR CORNETT: Yes. [LB1055]

SENATOR NELSON: I have some concerns about that. So thank you, Senator Cornett. Thank you, Mr. President. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Cornett, you're recognized, and there are no additional lights after you. [LB1055]

SENATOR CORNETT: I wanted to speak. I was not going to speak to the issue that Senator Dierks brought up, but with Senator Erdman's concerns I felt that it was

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necessary to rise and speak to it. I agree that we have a problem with abandoned horses in this country. There is nothing we can do at the state level in regards to that because of legislation at the federal level in regards to horses being slaughtered for food. That has been outlawed. Again, you still can euthanize a horse humanely but you cannot euthanize it or sell it for slaughter and euthanized. That is a problem that I feel that we are going to have to deal with because I know the number of abused and abandoned horses is rising dramatically in this country. I've been a horse owner since I was a child. I've bought horses from the killers and I've sold horses to the killers before. We have to find a solution to that but this bill and Senator McDonald's bill is not the appropriate place for that. Thank you very much. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Louden. [LB1055]

SENATOR LOUDEN: Thank you, Lieutenant Governor, members of the body. I think Senator Nelson brought up an interesting question about that Section 3 there, any person convicted of a felony, a Class IV, shall not own or possess or reside with an animal for not less than 15 years. This could be a case where conviction and if they were charged and didn't defend themselves properly, you'd get some people that are in the farming and ranching business would literally be out of business. I question why it would be you couldn't have an animal for 15 years. I mean, what are we talking about here? You can send...you can have people kill people and they don't go for jail for 15 years, and here you're talking about you can't have an animal for 15 years? So I have quite a little reservations about that part in there. And with that in there, I can't support this amendment with that part in there because I think it's a little bit too severe for somebody that...especially in the state of Nebraska where we have...rely on livestock as one of the major industries. So at the present time, with that part in there, I can't support it. Thank you. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Louden. Seeing no additional lights on, Senator Cornett, you're recognized to close. [LB1055]

SENATOR CORNETT: Thank you very much. Again, I want to urge the body to support this amendment. It clarifies language that was passed last year. And, Senator Louden, you bring up a concern, but if you read the bill that we passed last year, the amount of cruelty that you would have to do to be convicted under the bill that we passed last year is significant. It is not something that is common at all. And we do not see convictions in our farming communities and people that practice husbandry in this state. People that practice husbandry in this state know how to care for their animals, whether it's their dog, their horse or their steer. Thank you very much. [LB1055]

PRESIDENT SHEEHY: Thank you, Senator Cornett. You have heard the closing. The question before the body is on the adoption of AM2444 to LB1055. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1055]

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ASSISTANT CLERK: 28 ayes, 2 nays on the adoption of Senator Cornett's amendment. [LB1055]

PRESIDENT SHEEHY: AM2444 is adopted. [LB1055]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB1055]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator McGill, you're recognized for a motion. [LB1055]

SENATOR MCGILL: Mr. President, I move LB1055 to E&R for engrossing. [LB1055]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1055 advances. (Doctor of the day introduced.) Mr. Clerk, we'll move to next item under Select File. [LB1055]

ASSISTANT CLERK: Mr. President, the next bill is LB1157. The bill has been considered previously on Select File. At that time E&R amendments were adopted, as was an amendment from Senator Raikes. I now have an amendment from Senator Dubas, AM2363, Senator, but a note that you wish to substitute AM2591. [LB1157]

PRESIDENT SHEEHY: Without objection, so ordered. [LB1157]

ASSISTANT CLERK: Senator Dubas would offer AM2591. (Legislative Journal pages 1149-1150.) [LB1157]

PRESIDENT SHEEHY: Senator Dubas, you're recognized to open on AM2591. [LB1157]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I substitute AM2363 with AM2591 after working with the Nebraska State Education Association on this amendment. I'm sure there will be some questions down the road, but I think what we're trying to do is work on a compromise to make an issue that's very, very important to the teachers of our state, something that they can...at least feel they can live with. This amendment would allow the state board to select the number of times that our students will be tested under this legislation. One of the things we hear over and over from our teachers is the amount of time that they're having to take from the classroom and from actual teaching to conduct tests. The minimum amount of times will include at least one grade in the elementary, one in middle school, once in junior high, and once in high school. The minimum language allows the State Board of Education to decide whether four times is enough, or whether the seven proposed testing times in this bill is too much. And for the record, I am not opposed to uniform testing, and I understand the

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direction we're trying to get with this bill. But as I stated previously, I'm opposed to the number of times and the amount of testing that we're looking at with our children and the amount of, again, additional hours and times it's taking out of actual classroom work, and away from the opportunity for our teachers to teach. So with that, I would ask your support of this amendment. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You've heard the opening to AM2591 to LB1157. The floor is open for discussion. Members requesting to speak: Senator Raikes, you're recognized. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Before speaking on Senator Dubas' amendment, I want to remind you quickly of where we are on this bill. This is an ongoing attempt to make clear the need for a uniform system of standards and assessment for our public schools. This was a process the Legislature decided last year in LB653. LB1157, this bill, leaves the assessment function in the Department of Education and provides the state board with a clear statutory mandate for uniform statewide assessment. So that's the subject area we're on again, just to remind you. We do in this bill as it now stands leave the authority for assessment with the department and the State Board of Education. The bill, as it is written, requires tests in grades three through eight, and a high school grade for math and reading, and for science there would be three grades, including one at elementary, middle, and high school. Those are the current requirements for No Child Left Behind, which is of course the federal requirement, and also there is federal funding that comes the state's way as they meet that requirement. I don't think it's wise to do something other than that in this particular legislation. If at some time it were not a requirement for that amount of testing, and the Legislature at that time decided that they wanted to do something different, that would be an appropriate time to make a change. But now is not an appropriate time, so I don't support the Dubas amendment. Thank you. [LB1157 LB653]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Avery, you're recognized. [LB1157]

SENATOR AVERY: Thank you, Mr. President. It comes as no surprise to this body that I am going to support this, of course. Let me tell you why. LB1157 has several advantages over the current system. It will reduce the amount of time that teachers must devote to testing and reporting to the State Department of Education. And this leaves more time for teachers to teach. Currently, school districts in Nebraska are required to submit portfolios that document the process by which the local tests are developed. There would be no need under this legislation for such portfolios. And this would save many districts a great amount of time and resources. A second advantage, it would create some uniformity of standards and tests. The current system of local assessments measure widely different standards, use a variety of different proficiency definitions, and vary in interpretations of what constitutes passing scores. That seems to

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me not to make any sense. It would also promote accountability. Schools will have to meet statewide standards and use statewide tests to measure performance. Currently we are the only state in the country that continues to use local assessments for federal and state accountability. Many of our neighboring states--and many of these neighboring states have some of the finest schools in the country--do statewide tests for accountability purposes--Kansas, Minnesota, and Wisconsin, for example. LB1157 does nothing to prevent classroom teachers from using classroom assessments for diagnostic purposes to assess how their students are progressing and to find out what are their learning needs. That's STARS. If they want to continue doing that, fine. What LB1157 does is prevent districts from using local results for accountability purposes. We already use a common metric to measure our students' writing skills, and this worked. Writing has improved in our schools. It seems to me to be very logical that we would use a similar approach to measure student performance in other subjects. I urge you to support this as presented by the Education Committee and to reject amendments that you're likely to see similar to this. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Avery. Additional members requesting to speak on AM2591 are Senator Wallman, followed by Senator Pedersen, Senator Kopplin, Senator Chambers, and Senator Raikes. Senator Wallman, you're recognized. [LB1157]

SENATOR WALLMAN: Thank you, Mr. President. And I guess you probably all know I stand opposed to this bill. Here I just got a letter from a teacher from...went from here to Texas. And she says the educational system we have in place in Nebraska is excellent. Teachers are able to help students develop their skills, build knowledge, provide not only an excellent background for higher education but give students good life skills to carry with them into the workplace. Students are learning how to think critically and solve problems, in addition to their basic reading, writing, and arithmetic that is expected. They are encouraged to be creative and think outside the box. If we have a state test here, it will be the same and we're not all the same. Teachers in Nebraska, most of them enjoy teaching. They're able to create lessons that their students are interested in. They're able to engage students in learning. And due to the way the current Nebraska school system is set up, teachers are able to do what is best for their classroom and students in it. We don't know what goes on in the classroom unless you're a teacher. This is not the case in Texas. Texas has a state testing system, it's called Texas Assessment of Knowledge and Skills, TAKS. It's the basic for every decision in the classroom. Teachers teach for the test. Teachers plan lessons, they do not ask what skills their students will need to be successful or what the students need to get the highest possible score on their TAKS test. That's what they teach for, so they're not prepared with life skills of creating thinking or problem solving, but rather are taught how to use a specific set of strategies on a test, strategies that will only help confuse them in any real-life situations. So rather than plan the school year based on the educational needs of the students, curriculum is based on what Texas says and it's...so

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if students struggle with the math concept the problem is ignored until it's time for another test. If a student can't read, they have to wait until it's time for another test. So if you want to get real assistance with the problems they're facing, subjects that aren't going to be...are going to be tested, social studies and science in fourth grade can be ignored completely, taken as a luxury or as a break from actual work. The scores that the students receive on these tests are so vital to the financing of the district and schools that education is forgotten and funding becomes a primary concern for the test. So beyond the educational downfall of statewide testing, the school environment that it has created is completely toxic for educators and students. Teachers, most of whom went into education solely to help their students learn, are now being forced to produce good test takers instead. And some children are not good test takers. Some take it orally, some do well at written, so we're not all the same in the test environment. So teachers in Texas can see that they are not helping this generation of children to succeed, yet the lawmakers are forcing, I emphasize, forcing them to continue down a path of ignorance and stupidity. I have yet to meet a single person who is involved on the educational side of these tests who believe they are a good idea. Finally, if this bill is passed in Nebraska you'll probably lose good teachers. I have met Texan teachers who are giving up on education entirely because they cannot handle seeing their students only learn to test. The system is failing the students so much that the teachers, the very good teachers, no longer want to play a role. Those who are more resilient are moving to Nebraska so they can teach in a way that actually benefits their students. [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR WALLMAN: Texas state testing is producing a generation of students who are unprepared for the real world. I sincerely hope that Nebraska students will have a better outlook. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Mr. Clerk, for an announcement. [LB1157]

ASSISTANT CLERK: Mr. President, the Judiciary Committee will hold an Executive Session under the south balcony now. [LB1157]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Pedersen, you're recognized. [LB1157]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. This has been a tough one. I'm not sure yet how I'm going to vote on this bill. But when I read the letter that Senator Dubas handed out, and it was sent to me the other day, it reminded me of my teaching days. Yes, I was also a school teacher once upon a time. In looking for something to do and a shortage of teachers on the reservation in South Dakota, I taught a one-room country schoolhouse for two years,

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then where you had all eight grades in one room, one teacher. I never had all eight grades, because I didn't have that many kids. I had five kids one year and seven kids the next. And as I look back at that education that them people got with me, not a trained teacher, and having only one year of college education myself at that time, they didn't do bad. Five of the seven completed college. We did things in that classroom that they can't do in classrooms today. When it was time for the neighbors to work cattle in the spring, we let out school all day and we all went and helped the neighbors work cattle. When you did science, in a warm time of the season, you could go out, walk down the creek, watch the flowers grow and the livestock and the wild animals. It's a nice picture I just painted, but it's also a good education. We didn't have testing. The teachers I have heard from on this bill all have given me the same feeling that I just tried to give you that I have about my two years of teaching. They do not like this bill. However, I also realize that politically this is a good bill. I keep coming down on the side, I don't know that we need it for education of the student, but do we need it to keep things moving and for the current agenda that we have today in our schools? I'm not here to influence your vote one way or the other, but I had to make that statement after reading this letter again this morning. What is our goal? I know what most of us want it to be, but is that what is going to be best for the student? [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR PEDERSEN: I don't know. I'm going to keep listening. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. (Visitors introduced.) Senator Kopplin, you are recognized. [LB1157]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. Is Senator Avery available for some questions? [LB1157]

PRESIDENT SHEEHY: Senator Avery, are you in the Chamber? I do not see him, Senator. Oh, yes, he is here, Senator. Senator Avery, would you yield to Senator Kopplin? [LB1157]

SENATOR AVERY: Yes, I will. [LB1157]

SENATOR KOPPLIN: Thank you, Senator Avery. Senator, in your long and austere career in education, how many years did you spend teaching third graders? [LB1157]

SENATOR AVERY: Zero. [LB1157]

SENATOR KOPPLIN: How many years did you spend teaching elementary students? [LB1157]

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SENATOR AVERY: Same answer. Senator, I taught the product at the university. I saw firsthand what was coming out of the schools. [LB1157]

SENATOR KOPPLIN: Thank you for that ad lib. But the point is you're making comments about what these tests are going to show on these elementary kids and you've never taught an elementary student. You look at students that come to you in college and say, boy, I got to have better students than this. And I'm going to remind you again that only 25 percent of students that begin at the University of Nebraska actually graduate. Thank you, Senator. Comments were made about, well, teachers could still do a portfolio, if they wanted to, thought they needed to. Do you know what's in a portfolio? A portfolio is going to show, hey, this is what this child could do at the second grade; here is some work from the third grade, here's some work from the fourth grade. Parents can say, yeah, he's making progress. But that's not what you want. You want to say, well, in second grade he got 61 percent, third grade he got 62 percent on a different test, but that must mean he's improving. You know, I understand the Legislature's feelings that we didn't get what we wanted. We want a score that we can compare and have it show what kind of quality of people are coming out of our schools. You're going to be so disappointed, you're going to get a big long list of scores in the paper, and you'll do it just like we do in state aid--ruffle through, where's my school, hey, 85 percent, we're top notch; wait a minute, my school is in a wealthy suburban district, they ought to be scoring 90, that's a rotten school district. But the test score doesn't show that. Or you're going to look at my school--oh my gosh, we're only up to 46 percent. But wait a minute, these kids can't even all speak English. And they were here, if I look in my portfolio, and now they are here; they have made tremendous progress. But the paper says I'm a failure. Pass this law, it's okay. Last time I was at the mike of the last session, I said we can live with the test, and I was blistered completely by a friend of mine saying, who can live with the test, the teachers, the kids, or you guys down there? [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR KOPPLIN: We can live with the test here, but we should pay attention to what Senator Dubas is saying. How many times do you need to test third graders, or fourth graders, or fifth graders? And how can you compare one year to the next, unless you're using the same test to see whether they have indeed progressed on that test? No, you have a different test, a different score. This is not the big solution that everyone is seeking. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Chambers, you are recognized. [LB1157]

SENATOR CHAMBERS: Mr. President, members of the Legislature, what I see in the opposition to this bill is fear, fear of change, lack of confidence on the part of teachers.

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I've seen letters that they supposedly have originated, the language is so similar, the thoughts are so limited, they're almost in lockstep, and they may have been told vary this a little bit. But I think what the teachers fear is that they're the ones who are going to be evaluated. Education is in such a poor state in Nebraska right now many students cannot compete when they go other places. And those who leave the elementary schools in Nebraska do have to take remedial courses when they get out of high school. Teachers don't have that hard a job right now. I know they don't. And I know of teachers who have come to me about being told by their principal that what you are doing is making the other teachers uncomfortable. This teacher was innovative and the students were excelling in her class and, because it was casting the wrong kind of reflection on the rest of them, she was told to cut it back. And when I asked her, you want me to talk to that principal, she was afraid that then there would be retaliation taken against her. And you all can believe it or not believe it. But I have a lot of down here on the ground, hands-on dealing with teachers. My brother was a teacher. He retired. He taught at Westside, of all places. Teachers and others who have been doing something a long time a certain way fear change. The Legislature is not showing leadership. The Legislature is latching onto this notion of fear, and you've got to keep these kids in this little, safe, cocoonized environment because the teachers say that. Children respond to what they are presented. If they have somebody who is as dry as toast, then they're not going to respond. We can look around this Chamber sometime when certain senators stand up; everybody tunes that person out and goes to sleep. See, I'm an observer. I look, I watch, I read my colleagues. You all think I'm not paying attention. Oh, I got my ears open and my eyes open. And then other people stand up and there's a tendency to listen. You all went through school. You all know the kind of teachers who impressed you, if you ever had any who did. They engaged your mind. This talk of requiring a certain kind of testing is going to destroy education, is going to send these teachers to the hospital with stresses, nervous breakdowns because they cannot deal with testing. That is insane. I listen and I wonder where am I and what year is this? And then I think back to when I went to school, many years ago, and I say, it can't be a time warp because we had a lot of testing when I was in school. And the teachers were not carrying on in the way that these teachers do--afraid. They welcome people coming in the classroom and watching. I took tests every single week in math, in reading, in spelling. And the only way you could get a blue mark in spelling--that was a good grade and a red mark was not--we had 20 words, if you didn't get all 20 of them correct, you got a red mark. My psyche was not hurt by that. I wanted the blue mark, but, more than that, I wanted to know how to spell words. You have teachers who do not teach the power of words, and in their presentations they cannot demonstrate to children how effective the use of words can be, how persuasive they can be, how you can get kids who seem not to be interested to suddenly take interest. That's why you should read mythology, you should read children's stories, you should read Grimm's Fairy Tales, you should read the "Bible", you should read the The Koran, you should read... [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

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SENATOR CHAMBERS: ...the Old Testament, because you find different ways of presenting very common, human experiences. I had to give a talk out at Broken Bow and people out there were so angry at me coming, some of them, that when I got there, there was State Patrol cars, county sheriff cars, and police cars. And when I got in, I said, did somebody come in and do something to the kids? They said, no, they're here to protect you. (Laugh) I said, me? From what? And I was talking to kids from kindergarten through eighth grade. And the teachers and everybody was amazed when I left, because I kept the little kids interested and the eighth graders interested because I knew how to tell a story that would allow me to address certain parts of it to the kids who were older, right down to the little bitty ones, and had them looking at each other and enjoying it. When I left, they said it was regretful that some of the parents kept their children from listening to me talk. But anyway, I have a chance to say a thing or two, but I won't say it all now because my time is out. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Raikes, followed by Senator Harms, Senator Kopplin, Senator Karpisek, Senator Chambers. Senator Raikes, you're recognized. [LB1157]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I've heard a number of comments, a couple of which I want to respond to. One of them, the comparison was made to Texas. We are not suggesting or providing for a system similar to that in Texas. The notion that that is what is being proposed here, I don't know where that comes from, but it doesn't come from reality. So I don't disagree that there are problems, particularly when you have graduation requirements and teacher promotions and all of the things like that based on some sort of a test result. But that is not what we're proposing here. We're simply proposing that we have a uniform system statewide where we can accurately measure the academic achievement of students. Let me also mention just a couple of more things regarding this amendment offered by Senator Dubas. I will tell you I'm disappointed because Senator Dubas and I have had conversations over at least the past week. And in those conversations I never did receive any specific language about an amendment until it shows up this morning. That's not a good way to do statute. This is too important a subject to try to manipulate on a surprise type basis. It just doesn't make good sense to me. After having had a chance to look at it, my response is really in a couple directions, one of them regarding eliminating grade requirements in statute. We are having to do that, I will remind you, because the department and state board have been unwilling to respond to the intent of the Legislature. We have been forced into the situation, in a way, where we need to say specifically what we want done. I absolutely believe it's imperative that we continue that. On the other hand, to get into additional detail and say that it has to be a norm-referenced test or a criterion-referenced test or a combination of the two I think crosses the line in the other direction. We do in fact empower them to be responsible for statewide testing, academic accountability. We're insisting that it be done in grades 3

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through 8 and 11 in the subject areas included, but we are leaving some discretion to the state board to use their expertise to carry out this program. So again, I do oppose the Dubas amendment. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Harms, you are recognized. [LB1157]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Adams, would you yield for just a few minutes, please? [LB1157]

PRESIDENT SHEEHY: Senator Adams, would you yield to Senator Harms? [LB1157]

SENATOR ADAMS: Yes, I will. [LB1157]

SENATOR HARMS: Thank you very much, Senator Adams. LB653 was implemented last...we passed it last year. Has anything been implemented at all that we're using on LB653 in the schools and... [LB1157 LB653]

SENATOR ADAMS: Senator Harms, would you repeat what you said, please? I wasn't able to hear. [LB1157]

SENATOR HARMS: Yeah, I would. We passed LB653 last year. Have we implemented any parts of that? Are we using any of that at all at this point? [LB1157 LB653]

SENATOR ADAMS: We're not using it yet. However, I would tell you that I do know that there is progress towards developing the statewide test that we asked for there. And at the same time there are committees meeting to revise or to reexamine the standards to determine if any of them need to be revised. [LB1157]

SENATOR HARMS: Okay. I know that both off the mike and on the mike we have talked a little bit about teachers' time and workload in regard to this aspect. When we look at LB1157, what type of workload are we anticipating from our teachers? [LB1157]

SENATOR ADAMS: Senator Harms, that to me, having come from the classroom, is a big part of LB1157 in contrast to LB653. Right now under LB653, though there are some statewide tests being developed, there still is the intention of using local assessment to fill in other gaps. Local assessment is a great concept as long as you don't have to validate it with the feds. That's where it gets very, very cumbersome. And with LB1157 it would certainly be my hope that we reduce the amount of time that teachers are spending becoming test creators and validating these assessments and get them more back into teaching. [LB1157 LB653]

SENATOR HARMS: Senator Adams, do you think that as we go through this process,

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and I understand assessment and testing and how you have to line up your curriculum and things, what do you see actually happening in regard to the new standards and trying to align in this their curriculum and their tests and their data for this...for improvement? I guess what I'm concerned about is still that workload aspect. And you know, there is a lot there, so how do we get that in position? And there's another part of that question, so if you could answer that for me it would be helpful. [LB1157]

SENATOR ADAMS: If I understand your question, I'll give it a shot. We have standards in Nebraska for English, and mathematics, and science; we can go down the list. And I think it is absolutely necessary that on a regular basis we take a look at those standards and reevaluate them and decide, is this what we want our students to know? When we reevaluate those standards then it also puts us in a position where we need to reevaluate the ways in which we are going to measure those standards. Now from a workload standpoint, very practically speaking, we're in the process right now of redoing standards. When we redo them, to whatever degree we redo them, it means that we're back to the drawing board with assessments and validating those assessments. Let me add very quickly, I don't want to eat up too much of your time, one more thing. [LB1157]

SENATOR HARMS: That's okay. [LB1157]

SENATOR ADAMS: Right now school districts determine the curriculum, how it will be taught in order to meet those standards. I don't foresee that changing. [LB1157]

SENATOR HARMS: Then it gets back to the other part of the question then would be, when we have to do that, we are going to have to spend quite a bit of time in probably realigning the teachers' workload, if the tests are going to change. That's what my concern is. And so when we add that additional workload... [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR HARMS: ...on these teachers or we change the workload, we may not add but we just change the direction of that workload, how will they accomplish that? Will they be able to have...are they going to have time off to be able to do that, or are they going to have to do it and teach and they've got 25 children? I guess what I'm saying is that when I was running for this office I talked to a lot of small schools, Senator. That seemed to be the big frustration and the greatest fear from the teachers, particularly at the...I think it was at the fourth grade where it seemed like they were just inundated with how to bring all this together. So what I'm really trying to come to grips with in my own mind is what is this workload going to be like, and are we going to be seeing the same kind of frustration? [LB1157]

SENATOR ADAMS: I would hope that we're not going to see those same kinds of frustrations, that we're going to reduce that workload and get teachers back into the

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classroom, continuing to teach, but spending more time teaching and less time becoming proficient at being test writers. [LB1157]

SENATOR HARMS: Thank you very much. Appreciate your answer. Senator Raikes,... [LB1157]

PRESIDENT SHEEHY: Time, Senator. Time. Thank you, Senator Harms. Senator Kopplin, you're recognized. [LB1157]

SENATOR KOPPLIN: Thank you, Mr. President, members of the body. I'd like to ask Senator Adams a question. [LB1157]

PRESIDENT SHEEHY: Senator Adams, would you yield? [LB1157]

SENATOR ADAMS: Yes, I will. [LB1157]

SENATOR KOPPLIN: I think I know this answer, Senator Adams, but were you ever afraid to give your students a test? [LB1157]

SENATOR ADAMS: Nope. [LB1157]

SENATOR KOPPLIN: No. I knew that would be the answer, because, you know,... [LB1157]

SENATOR ADAMS: That was social studies, too, Senator Kopplin. [LB1157]

SENATOR KOPPLIN: ...teachers are not afraid to give their students tests. You know, why paint a whole profession with a big, broad brush, saying our kids know nothing coming out of elementary schools, teachers are afraid to test and all of this? Not the teachers that I worked with, not the teachers that I hired. I'm proud of every one of them. They're not afraid to test. And whatever we do here, they will do it. And if we come up with one good test that does show progress, I'll be the first to admit it and say, yep, they're doing all right. The teachers aren't afraid to test. They're not afraid to be innovative and work with their kids and make them happy and make them learn at the same time. I'm sorry if there are schools that way in this great state. If there are, they need to be corrected and the school system needs to be corrected. But the teachers I know, the teachers I have worked with, the teachers that I've seen over the years are not scared, snivelling under their desk because somebody is going to test them, or that they're afraid to try new things because it might make somebody else look bad. I'm proud of you, teachers. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. Senator Karpisek, you are recognized. [LB1157]

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SENATOR KARPISEK: Thank you, Mr. Lieutenant Governor, members of the body. I have to stand in support of Senator Dubas' amendment. I do have to say, Senator Raikes, I had to chuckle when you said this is not the way to do anything when it just showed up this morning. What did we get yesterday? We got six pages of paper to look through in five minutes. I did have to chuckle, but I don't think it's that funny. I have meetings with my...conference calls with my superintendents in my district every two weeks. I had a day meeting with them this summer. There was not 1 out of 13 that thinks this is a good idea. I've also talked to many teachers, not one has thought it's a good idea. Senator Chambers is correct, they're scared of change. Sure, they're scared of change when they think it's a wrong change. If they thought this was a right change, I think they would do it. Teachers are not in this business to make it easy on themselves or try to not do the best for kids, that's obvious. My real problem with this whole bill is, with option enrollment and a ranking system, do we think that parents aren't going to send their kids to the next closest district if they rank higher? Of course they will. What's that going to do to the school that ranked lower? Kids will leave, they'll get less state aid, they'll get less teachers, they won't get as good of teachers. It seems like a vicious cycle to me and it's not the way to go. These teachers have worked long and hard on these tests. I think it was probably this body that told them to do those tests. They're proud of what they have. Are they all perfect? No, but they try. And we know that these kids are learning, they know where they're at, where they need help. I also worry about the kids that aren't going to make it. They're not going to hit average on these tests. So what happens to them? They get cut loose. That kid is never going to make it anyway, so we just as well cut him loose and work on the ones that we can get high enough to score. This is all going to come down to a big competition, who gets the best scores, who gets the money. It's not good for rural schools, it's not good for urban schools, it's not good for any schools. What's going to happen to the one on the very bottom? I'm sure a lot of good teachers want to stick around there and say, well, we had really bad testing, but I'm going to stay here and I'm going to get that up next year. I doubt it. They're going to want to go to a school with better scores. They're going to try to improve those scores. Think, boy, those kids are a lot smarter. Are they smarter? I don't know. I think maybe there's a lot of things that play into that--demographics, poverty, hunger. To me this is taking away from those that need it and giving to those that don't. I know if I say local control one more time Senator Friend may come over and thump me, but I'm going to say it one more time anyway. Local control,... [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR KARPISEK: ...these schools know what they want for their kids. Let's work with what we have in place from last year and see how it goes. This is changing again too fast, without...I don't think we even know where we're going here. I know that the Education Committee has worked hard on this. I know that they feel that this is the right way to go. I just disagree with that. Thank you, Mr. President. [LB1157]

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PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Chambers, followed by Senator Avery, Senator Pankonin, Senator Dubas, and Senator Pahls. Senator Chambers, you're recognized. [LB1157]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I would feel much better and lend more credence to what teachers and educationists are saying if I heard them emphasizing the need for a rigorous curriculum. I don't want children in my district to just be getting what they call good grades, and then they don't know how to read. I test a child by giving them a newspaper. I say, read the paper, and that child has gotten good grades at these very pathetic schools, and the teachers with the least qualification are sent to the schools where my children go. And you all sitting around here, talking all this yow-yow and are not even good examples when you speak of what an educated person ought to be. Educated people are not sent to this Legislature and that's why they can be moved around and bullied on these issues by somebody saying, I'm a teacher or I'm trained in education, therefore, you take what I say, but your ear tells you that they're not making sense. But conscious of your own perceived flaws, you lack enough self-confidence to tell that person what you're saying doesn't make sense. Why don't you talk to me about what the children are going to learn in math? There are a lot of teachers who don't even know what the term "thought problems" means now. When I went to Creighton, it was supposed to be a school with high academic standards. I graduated from Tech High, short for technical. They taught you things in shop, it had a very low standing in the minds of a lot of people who attended other schools. I went to Tech because everybody else in my family before me had gone to Central. Central was supposed to be the best school in Omaha and I wanted to show that I could learn anywhere. I graduated from Tech and when I went to Creighton...the only way I graduated from Tech, I got some credits for having played football because they...one semester I had gym, I had lunchroom, I had three or four study halls, I had art, and they just knew I wasn't going to do anything. Black kids who talked about going to college were discouraged. But I can read, and I read, and I went beyond what teachers were telling me and I didn't limit myself to what was available in gym, art, lunchroom, and study hall. And do you know what happened when I went to Creighton and took their entrance exam? In English, I was put in the honors English class, honors English. And I didn't attend my English classes at Creighton University. I read. I spent time in the library. I might have attended three classes and I was at every examination, and I read so much that I went beyond all that was required and assigned by the instructor. One of the professors I had was named Paul Smith and he was an authority on English and he saw what I was able to do and he said I didn't have to come to class. And I worked in those years, and when I would come to class, I'd sit in the back and go to sleep, and he didn't mind, but my ears would be open. And one time he said--he called me Ernst--he said, you wonder why I let Ernst sleep? Because Ernst knows more asleep than the rest of you all know awake. Then he'd call on me on an issue that the other students didn't know the answer to, and I could give the answer. I can read. I can understand things. I

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don't limit myself to what is said in the classroom. And I'm listening to these people talking here and they're talking form and not substance, not substance. All they're talking about is teachers are going to have to spend more time putting together a test. Well, if you teach what the children need to learn, they'll pass any test. And that's what I told them when I was in the law school and didn't attend classes there either. [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR CHAMBERS: If you write a test that anybody in this class can pass, I'll pass it. And I did, and I didn't attend class. People get misinformation on this floor and they read it, and it shows that they don't know what the bill is, they don't know what they're reading is misinformation, but they have confidence in who gave it to them and we should like a bunch of uninformed, uneducated people. That's why they will sit here talking about what happened last year under a bill, and they don't know. Somebody from NEA gave them a canned statement and said, read that, and they read it and cannot explain it, cannot discuss it, have not analyzed it. And these are the ones who are saying, we don't need to have a way to measure what our children are being taught in school. I want mine to be subjected to a rigorous curriculum and I want them to know and be able to compete with children who go to school anywhere. Children, in general, in America are behind students from any other country that's considered industrialized in the world, and they know more about American history... [LB1157]

PRESIDENT SHEEHY: Time, Senator. [LB1157]

SENATOR CHAMBERS: ...than American students. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Time. Thank you, Senator Chambers. Senator Avery. [LB1157]

SENATOR AVERY: Mr. President, I call the question. [LB1157]

PRESIDENT SHEEHY: Do I see five hands on the request to cease debate? I do see five hands. The question is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all voted who wish? Please record, Mr. Clerk. [LB1157]

ASSISTANT CLERK: 25 ayes, 6 nays to cease debate, Mr. President. [LB1157]

PRESIDENT SHEEHY: Debate does cease. Senator Dubas, you're recognized to close on AM2591. [LB1157]

SENATOR DUBAS: Thank you, Mr. President, members of the body. For me, the bottom line, it's about the students, and having them in classrooms where learning exists for the sheer excitement of learning, not just so they can regurgitate some facts and figures back on a piece of paper. I do know that testing is a critical component of

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teaching and that we have to have accountability. We have to have a measuring stick for our students. But what I hear is a great deal of frustration on the part of those who are in the classrooms doing the teaching. They feel like they're trying to hit a moving target and, for the most part, these are teachers who are proud of their profession, they're proud of the work that they do, and they want to turn out students who can compete in a global economy. They want to be in an environment where they can be innovative and be creative and be challenging, and I support those efforts. I think we need to bring the invested participants in this issue together. I think it's time to put turf issues aside, it's time to look at what it is that we're trying to accomplish. We need to look at curriculum. We need to look at raising the bar from all of our students, from preschool right on up. We do need a testing mechanism that evaluates our students and that encourages our teachers to be the teachers that they're meant to be. So thank you very much, Mr. President, and I ask the body to support this amendment. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Dubas. You have heard the closing of AM2591 to LB1157. The motion is on the adoption of AM2591. All those in favor vote yea; opposed, nay. Have all voted who wish? Please record, Mr. Clerk. Senator Dubas. [LB1157]

SENATOR DUBAS: I'd like a roll call vote, please. [LB1157]

PRESIDENT SHEEHY: Roll call vote, Mr. Clerk. [LB1157]

SENATOR DUBAS: And a call of the house, please. [LB1157]

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. [LB1157]

ASSISTANT CLERK: 42 ayes, 1 nay to go under call, Mr. President. [LB1157]

PRESIDENT SHEEHY: The house has been 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 Stuthman, would you check in? Senator Ashford, the house is under call. Senator Dubas, all members are present. We will continue with a roll call vote. Mr. Clerk. [LB1157]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1150.) Vote is 14 ayes, 29 nays on the adoption of Senator Dubas' amendment, Mr. President. [LB1157]

PRESIDENT SHEEHY: AM2591 is not adopted. The call is raised. Mr. Clerk, for an announcement. [LB1157]

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ASSISTANT CLERK: Mr. President, the Health Committee will hold an Executive Session at 10:45 under the north balcony. Next motion, Mr. President, on LB1157, Senator Dierks would move to indefinitely postpone the bill. [LB1157]

PRESIDENT SHEEHY: Senator Dierks, you're recognized on your motion, MO144, to indefinitely... [LB1157]

SENATOR DIERKS: Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: One moment, Senator Dierks. Senator Raikes, you have the option of laying the bill over or taking it up. [LB1157]

SENATOR RAIKES: Like to take it up, please. [LB1157]

PRESIDENT SHEEHY: Senator Dierks, you're recognized to open on your motion to indefinitely postpone. [LB1157]

SENATOR DIERKS: Thank you, Mr. President. Members of the Legislature, I had many, many difficulties with this legislation and so that's why I put this kill motion up, and it was...it served a purpose from the standpoint that it kept the bill off the agenda for several days and it gave people time to consider and reconsider and think about it. The information that I got concerning this legislation was all opposed, except for one letter I got with three different signatures on it, and the people that were writing me and asking me to oppose it were the teachers, administrators, ESUs across my district. And I even had a lot of that from other places across the state. And so I felt that this is about the best thing that I could do for the time being. And I'm not sure that the writing is on the wall, but I think maybe it could be. But I think that something else has happened that we should know about and that's that the people that objected to this bill from my district have e-mailed me the other day and asked me if I'd be willing to meet with a man who evidently had prepared most of the tests that they were using and I will meet with him and I think that, as I understand it, he may even have some support from the Education Committee. With that, I'm going to ask for people to comment, if they'd like, and then I probably will withdraw this IPP motion. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Senator Raikes, you have an opportunity to respond. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. Senator Dierks I think was correct in his statement that the happenings since the last time this was on Select File have been informative, and one of the ways we've been informed is to, I guess, further discover how much variation there is across the state in terms of testing and how little is done...how few schools, I should say, in the state seem to adhere to what is offered up as the theoretical, at least, procedure of the so-called

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STARS system. Senator Dierks referred to a person who does an on-line system that actually serves 96 school districts in Nebraska. This system I think provides potentially a prototype for what might happen in the way of an accountability system, an assessment system, that could be implemented with the passage of LB1157. There's been some very good work done by him and others. The system that he has not only provides for a summative assessment, an end-of-the-year type assessment, but also, as I understand it, for formative assessments or feedback assessments that teachers can use throughout the year. So there is some good groundwork available for us to proceed with or for the department to proceed with once LB1157 is adopted. So I do appreciate the information that we have gathered and we are going to proceed with that. As Senator Dierks mentioned, we're going to have a meeting on Monday. I do, of course, oppose the motion to indefinitely postpone, but I think there has been some good come of it. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Members wishing to speak on the motion to indefinitely postpone: Senator Chambers, followed by Senator Raikes, Senator Pahls, and Senator Wallman. Senator Chambers, you're recognized. [LB1157]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Dierks said he's going to withdraw this motion but he's going to give people the opportunity to speak, and I'm going to because what I say would apply to whatever we do on this bill because I'm giving my views, some of them, on education. But there's one thing, I wish Senator Hansen were here, but I'll wait till he comes back because he said something the other day that explained a song to me that I've been wondering about. But I've got to wait till he comes back to confirm what it is I'm going to say that he said when he was on the floor. There are in this society, when you read the newspapers and other things, a gross misunderstanding of the meaning of words. There will even be people on this floor who will use the term "liberal" in a disparaging way without even understanding what the term "liberal" means. They will conjure up in their minds a certain newspaper, a certain individual, but they don't know what "liberal" means. They don't even know what a liberal education is. If you told them a liberal education, they think that means you're going to go for somebody who's on what they call the left. And you say, well, what does somebody on the left believe? They say, well, they don't believe what people on the right believe. Well, what do people on the right believe? They believe what the people on the left don't believe. Well, what does either one of them believe? They don't believe what each other believes. Because they don't know anything. They have things put in their head and it reminds me of something that Chaucer had written: He, like a parrot, was really quite dense; he remembered the words but he didn't get the sense. So the parrot will repeat. There are other animals taught to repeat the sounds that they hear, but they get the sound but not the sense. A liberal education was the kind of education suitable for a free man. Leave women out of the picture altogether. In the early days, Senator Carlson, even before I was born, there were societies such as Greece and Rome where certain individuals were thought to

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need a certain type of education at a certain level so that they could lead society, rule society, govern. So the subjects that were suitable for a free man to learn were the subjects that comprised a liberal education, liberal referring to the status of the individual in terms of being free or not free. It didn't have anything to do with being on the right or the left of the political spectrum. And when you listen to Americans, even those who are commentators, and you know something, you cringe. I don't listen to them. Their knowledge is so superficial, so inaccurate it's not worth listening to. When people ask me why I won't discuss slavery with white people, why I won't discuss racism with white people, why I won't discuss the law with white people, I say they don't know enough for me to discuss anything with them. They don't know enough, and they certainly don't know enough for me to argue with them. Oh, they can yow-yow, but what they say has no value or validity because it's not based on facts, information, research, analysis or anything that would give substance and significance and consequence to what they say. So they open their mouth and words come out. And if you stop them after the third sentence and say, what did you say during the first sentence--well, what's a sentence? They don't know. You ask them what does...well, no, I won't go through all that. It would take my time without making a point, because after I've made the point some people wouldn't understand the point that I made. [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR CHAMBERS: But there's a difference between cosmology and cosmetology. And some people, when they hear cosmology, you say what does cosmology refer to--well, the products that you get from Avon, Mary Kay, and some of these other cosmetics companies. I say, so that's what cosmology means? Yes. I say, well, what is a cosmologist? Well, that's somebody who fixes hair or cuts hair. And I commend them to the dictionary and tell them, look up cosmetology. How are you going to argue...let somebody like that argue with you? So when I hear a discussion about education, when I see an amendment that says "criterion," and it was sponsored by NSEA and the word they mean is "criteria," because they don't know the difference between the singular form of the word and the plural form; when they say "data" as though... [LB1157]

PRESIDENT SHEEHY: Time, Senator. [LB1157]

SENATOR CHAMBERS: ...it's singular...you said time? [LB1157]

PRESIDENT SHEEHY: Time, Senator. [LB1157]

SENATOR CHAMBERS: For Jell-O? I understand. (Laugh) [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Members wishing to speak on the motion to indefinitely postpone: Senator Pahls, followed by Senator Wallman. Senator Pahls. [LB1157]

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SENATOR PAHLS: Lieutenant Governor, members of the body, I take a different perspective on this issue of testing. As a person who has been in this field many, many years, testing does not scare me. This idea of having tests that are similar throughout the state does not scare me. Why should it? It depends on what you're going to do with the information. Now if you're concerned about comparing it to other schools, so be it. Because last night I made a comment that I had hoped that a good many of you would visit some of the schools within your district, and let's say there is a school that does not score at the level that we would like that school or the students to score at. Then you start investigating. You do not look at a school just on achievement, just on testing. There are so many components to a school that we should be taking a look at. It does concern me that we get so concerned about the testing that we do not take a look at the total picture of what a school is all about. We know what a good school...the attributes of a good school: good teachers, good administration. We know that. That's why I believe that we ought to profile our schools. We ought to be able to, every school in the state of Nebraska, we ought to be able to pull it up, find out some good information about that school, and testing would be one part of that. There are so many, as I said earlier, so many components to a school. You should take a look at class size, the education of the teachers, parent involvement. See, I would downgrade the school if you did not have a lot of parent involvement. And you may say, oh, we can't do that because the parents are doing other things. It depends on how you go about involving them. A simple thing to look at--how many attend conferences--tells you an awful lot about a school. I believe most of us could walk into a school and not necessarily have to take a look at the achievement level of test and we probably would get some kind of a feel about that building, about the students inside that building. And the one thing that disturbs me most of all, because I do hear comments about teachers this, and sometimes not positive ones on the floor, I'm awful curious about, if you're going to change me, you have to provide staff development. That is a key place that I would go look at in a school's profile, is take a look at how much monies, how much time are we spending helping the teachers to become better at what they do? But, no, we get all in an uproar about testing. I think we're missing some of the most important components. Let's get on with the testing, but then let's find what is another area that we need to be taking a look at, and holding schools accountable. Have no problem with that. If people know up front what are the expectations, it's easier to set those goals. We know that through our own personal life. Again, not afraid of testing. I am concerned about the amount of testing. I think we could find a happy medium someday if we let this proceed. Take a look at the total building. Wouldn't it be interesting to know--and some of this is out there, I know it is--but the class size, how does that affect your building? If you're concerned about the textbooks,... [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR PAHLS: ...you should be able to push a button, show how many textbooks

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there are. If you're concerned about computers, push a button. And wouldn't it also be interesting to know about a school...let's take a look at the health aspect of it. How many times has the health department evaluated the school, the lunch program? It would be really interesting, all this information. Do you realize, administrators, they do keep a tab of how many students are sent to the office? Be interesting to know what the discipline program is at that school. See that's...testing is one part of it. We do need to get on with this, but eventually, before we stop, I know we can't get it done today or this session, but we ought to take a look at what a good school is and how we can make that school a better place for children and staff members. That's why I'm concerned about the additional money... [LB1157]

PRESIDENT SHEEHY: Time, Senator. [LB1157]

SENATOR PAHLS: ...gets to the building level. Thank you. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Are there additional members requesting to speak on the motion to indefinitely postpone? Seeing none, Senator Dierks, you're recognized to close. [LB1157]

SENATOR DIERKS: Thank you, Mr. President. I'm always intrigued by Senator Chambers' rhetoric concerning the bills that we talk about and how we get to different subjects on the same bill, and I'd just like to take the opportunity to make a little switch, too, before I sit down. I don't know if you've heard about it, but there's a slaughter firm from Brazil that is trying to buy Swift and Company packing out of Grand Island, and he's also trying to...they're also trying to buy the Smithfield beef packing concerns as well as the National Beef packing concerns, and if that's done, if that's successful, if our Department of Justice allows that, will have a monopoly in the beef processing business. They'll be controlling our beef supply and our beef business, and the monopoly will be located in South America. I wonder if that has concerns for anybody. I wonder if anybody is concerned about that aspect of things. We have the leading beef processing state in the nation and we are about to lose a lot of our controls of that. Are we to the point where we don't care anymore, we just think, well, there's nothing we can do to stop that, or what goes on in people's minds? I have great concerns about this. I think that...I've always had concerns about packers owning livestock, but they will own the largest beef slaughtering facility in the world and they'll also own the biggest beef feed yards, the feedlot industry in the nation...in the world. That's got to be concerning, I think, to those of us in the beef production business in Nebraska. Just thought I'd call that to your attention and maybe stimulate some thought. With that, I would like to ask you to withdraw my motion to indefinitely postpone, Mr. Clerk. [LB1157]

PRESIDENT SHEEHY: The motion to indefinitely postpone is withdrawn. Next amendment, Mr. Clerk. [LB1157]

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ASSISTANT CLERK: Next amendment is from Senator Christensen, FA251.
(Legislative Journal page 1151.) [LB1157]

PRESIDENT SHEEHY: Senator Christensen, you're recognized to open on FA251.
[LB1157]

SENATOR CHRISTENSEN: Thank you, Mr. President. What this amendment does is just simply clarifies that teachers and administrators have to be involved in development of these tests. Purpose is to keep it from being a test brought in from the outside and just forced in, to keep the local decision and control going on so that we have the teachers' input and things this way. I think it's just a clarification of what has been done, but I just want to make sure that it is continued to be done where the teachers that are teaching the kids and understand the kids have the best opportunity...or I think they have the best opportunity to understand what they need so that they should be involved in the testing of this. So I'm just going to ask you to support this and I'm going to give the balance of my time to Senator Raikes. [LB1157]

PRESIDENT SHEEHY: Senator Raikes, you're yielded 9 minutes. [LB1157]

SENATOR RAIKES: Thank you, Mr. President. And thank you, Senator Christensen. This amendment is one I support. I think it addresses a concern that is there among several teachers and administrators. It clarifies, as Senator Christensen said, that there would be teachers and administrators included in the process of developing the tests. I think that's a good idea. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the opening of FA251 to AM2093. The floor is now open for discussion. Members requesting to speak are Senator Chambers, followed by Senator Wallman. Senator Chambers. [LB1157]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, now that Senator Hansen is back, I'd like to ask him a question. [LB1157]

PRESIDENT SHEEHY: Senator Hansen, would you yield? [LB1157]

SENATOR HANSEN: Yes, I would. [LB1157]

SENATOR CHAMBERS: Senator Hansen, the other day when we were talking about the budget bill and highway construction, you were talking about something that's on the roads in rural areas when you come to a bridge. How did you...what was that and how did you demonstrate what that is? Because I told how the road will undulate when you're going to Omaha and if you're on it long enough you might be lulled to sleep. Then you said something that...what did you say in that regard? [LB1157]

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SENATOR HANSEN: Well, evidently there's a different contractor between Omaha and Lincoln because you say it's a swaying motion and you have a tendency to relax and maybe go to sleep. [LB1157]

SENATOR CHAMBERS: Yes. [LB1157]

SENATOR HANSEN: Well, we don't do that. We have safety features out in...especially east...or west of Grand Island where we have little moguls, I guess. (Stuttering sound effect.) [LB1157]

SENATOR CHAMBERS: (Laughter) Okay. That's... [LB1157]

SENATOR HANSEN: You can't go to sleep. [LB1157]

SENATOR CHAMBERS: That's it. [LB1157]

SENATOR HANSEN: And then when you see a bridge coming, you have to hold onto the wheel with both hands because you're going to take...you're going to go airborne. [LB1157]

SENATOR CHAMBERS: That's it. (Laugh) Thank you, Senator Hansen. (Laughter) I saw that demonstration but I didn't get it all, and when he did that, it explained this song to me. But it's a guy, he says, she looked at me with those big brown eyes and said, you ain't seen nothing yet. Then she says, b-b-b-baby, you ain't s-s-seen n-n-nothing yet. Well, she must have been driving that road that you're talking about and now I understand the song and the origin of it. But I'd like to now get to this amendment that we have before us. Senator Raikes, if he's there, I would like to ask a question of. [LB1157]

PRESIDENT SHEEHY: Senator Raikes, would you yield to Senator Chambers? [LB1157]

SENATOR RAIKES: Yes. [LB1157]

SENATOR CHAMBERS: Senator Raikes, in agreeing to this amendment, how many committees are there to be and how many people will be on each committee, or you trust the board to use...well, answer that question, if you have one. [LB1157]

SENATOR RAIKES: Senator, you're on to it with your last part of the question. This would be under the...at the discretion of the state board to determine exactly how many teachers and which committees and so on, or administrators and so on. But they would be included in the process. [LB1157]

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SENATOR CHAMBERS: But what they come up with does not have to be accepted as they presented. They will participate, give input, but they do not have veto authority or anything like that, based on the amendment, as it's drafted and as you envision its implementation. Is that correct? [LB1157]

SENATOR RAIKES: That's correct. There's not intended to be a veto process in it, yes. [LB1157]

SENATOR CHAMBERS: Thank you. I'm going to support the amendment. I'm going to support the bill. But I am a slow reader to this day. Because I'm a slow reader and I catch onto things slowly, I pay a lot of attention. People who read rapidly, based on things that I've read, trying to gain that ability, will see clumps of words. Well, I see the clump. They say, you can't read words individually and ever be anything but a slow reader. I don't read words. I read them letter by letter in a lot of cases. I linger over words and if I see a word and I know it's pronounced a certain way, I analyze it to say, based on these letters, is that the way it ought to sound, even though I know in English there are so many variations and exceptions to rules, you can scarcely give a rule that a person who doesn't know English could follow and learn really how to correctly pronounce words. Two of my favorites were seize and siege. If it's a siege, it's s-i-e-g-e. If it's seize, it's s-e-i-z-e. Being a child and trusting adults, I learned a rule: I before E, except after C or when sounded like A as in neighbor and weigh. N-e-i would be like A,... [LB1157]

PRESIDENT SHEEHY: One minute. [LB1157]

SENATOR CHAMBERS: ...because it doesn't follow a C. So then I'd hear people say "I-ther" and "nl-ther" and neither word has a C before the E and I, so they should have been saying "A-ther" and "nA-ther." But they wouldn't say "A-ther" and "nA-ther," and they don't want to say either and neither, so they say "I-ther" and "nl-ther." And what's somebody supposed to get from that when you've been taught this rule? Makes no sense. But that's what people need to think about sometimes when they say everybody should learn how to speak English, when those who were born into homes speaking English can't speak it, they can't spell it, they cannot construct a grammatical sentence. And then they have the nerve to look down their nose and say, speak English, learn how to speak English when you come here. What they ought to say is, in the manner that you speak it? They say, no, you got to do better than that; you can't come to America and be speaking English like... [LB1157]

PRESIDENT SHEEHY: Time, Senator. [LB1157]

SENATOR CHAMBERS: You say what? [LB1157]

PRESIDENT SHEEHY: Time, Senator. Speaker Flood, you're recognized for an

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announcement. [LB1157]

SPEAKER FLOOD: Thank you, Mr. President. Members, good morning. We are continuing to work on our Select File this morning. A reminder: If you look at the agenda, at 11:50 this morning we're going to attempt to vote on bills that do not have amendments other than E&R amendments. By way of clarification, those bills at this time would include LB952 from Senator Lathrop, LB889 introduced by myself, and LB958 and LB958A introduced by Senator Ashford. We will be working through the lunch hour. We'll make additional announcements later in the day regarding our adjournment time. Thank you, Mr. President. [LB1157]

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, you're recognized for an announcement. [LB1157]

ASSISTANT CLERK: Mr. President, a series of items for the record, new interim study resolutions: LR306 by Senator Janssen; LR307 by Senator Wightman; LR308 by Senator Nantkes; LR309 by Senator Nantkes; LR310, Senator Karpisek; LR311 by the Retirement Committee; LR312 by Senator Pedersen; LR313 by Senator Fischer. (Legislative Journal pages 1151-1156.) [LB1157 LR306 LR307 LR308 LR309 LR310 LR311 LR312 LR313]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Returning to floor discussion on FA251, members wishing to speak: Senator Wallman, and Senator Nantkes. Senator Wallman, you're recognized. [LB1157]

SENATOR WALLMAN: Thank you, Mr. President. Would Senator Chambers yield to a question? [LB1157]

PRESIDENT SHEEHY: Senator Chambers, would you yield to a question? [LB1157]

SENATOR CHAMBERS: Maybe I will and maybe I won't; depends on the question, partner. Yes, I'll answer. (Laughter) [LB1157]

SENATOR WALLMAN: (Laugh) Well, I hate to be according to norm-referenced. I don't think anybody could probably compare to you in colleague to speak English, is that right? [LB1157]

SENATOR CHAMBERS: Say it again? [LB1157]

SENATOR WALLMAN: There was nobody in your class could probably compare to your use of the English language. [LB1157]

SENATOR CHAMBERS: I'm too modest to give an honest answer, and I don't want to

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tell a lie. (Laugh) [LB1157]

SENATOR WALLMAN: (Laughter) Thank you, Senator Chambers. And I do support Senator Christensen's amendment. I think it helps us out here and so I do support this. Thank you, Mr. President. [LB1157]

SENATOR AGUILAR PRESIDING [LB1157]

SENATOR AGUILAR: Thank you, Senator Wallman and Senator Chambers. Senator Nantkes, you are next. You are recognized. [LB1157]

SENATOR NANTKES: Question. [LB1157]

SENATOR AGUILAR: Senator Nantkes waives. I'm sorry. [LB1157]

SENATOR NANTKES: Mr. President. [LB1157]

SENATOR AGUILAR: You are the last speaker. [LB1157]

SENATOR NANTKES: Okay. [LB1157]

SENATOR AGUILAR: That is not necessary. [LB1157]

SENATOR NANTKES: I was just going to call the question then, so don't worry. [LB1157]

SENATOR AGUILAR: Senator Christensen, you are recognized to close. Senator Christensen waives closing. The question is, should FA251 be adopted? All those in favor say aye...those vote aye; opposed vote no. Have you all voted that care to? Record, Mr. Clerk. [LB1157]

ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of Senator Christensen's amendment. [LB1157]

SENATOR AGUILAR: FA251 is adopted. Mr. Clerk. [LB1157]

ASSISTANT CLERK: Senator Dubas would offer AM2592. (Legislative Journal page 1156.) [LB1157]

SENATOR AGUILAR: Senator Dubas, you are recognized to open on AM2592. [LB1157]

SENATOR DUBAS: Thank you, Mr. President, members of the body. I introduce

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AM2592 as a way to get more teacher involvement in this process. As the bill currently reads, the Governor appoints members to this technical advisory board and I would return that responsibility to the Department of Education. You know, we have a Department of Education to deal with educational issues. I would like to think that we have the expertise in that department that deals with the testing issue, and that they would be able to put together this advisory board to help them address the concerns on the questions and to come up with a testing mechanism that will again, ultimately, serve our students and our teachers and give us the uniformity and the accountability that we all seem to be looking for. This amendment would also increase the number of teachers on the advisory board from one teacher to two teachers. Again, I think we quite often make legislation...well, every piece of legislation that we deal with here has an impact on someone, and we would like to think for the most part that they are positive impacts that we're making. But sometimes that's not always the case, and we don't want to always look to the people who are most impacted or who are most involved in the situation when we're making these decisions. I think the teachers are the professionals that are in the field that understand their schools, understand their communities and, most importantly, understand their students. And I think for the most part these are teachers who want their students to succeed, not by making it easy for them but by challenging them. And I think by putting additional teachers on this advisory board, fostering a good working relationship between the teachers and the Department of Education, I would like to think that we could reach that goal and reach that objective. Again, with the State Department of Education, that's their function, that's their goal, is to make sure that the educational system in our state is serving our students and is serving them in a positive manner. I think we've talked quite often this session about creating additional boards and commissions, and that maybe that's not the best use of people's time and doesn't always get us what we need. But I think if we involve the very professionals that we're looking at needing to use these tests, hopefully we can achieve the objectives that we're looking for. So I would appreciate the body's consideration of this amendment and look forward to a good debate. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Dubas. You've heard the opening on AM2592. Those wishing to speak are Senator Raikes. Senator Raikes, you are recognized. [LB1157]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I do not support this amendment for a couple reasons. One is that with the Christensen amendment, we have given considerable involvement to teachers, as is appropriate, and at a level that is appropriate; namely, at the base level of being involved in the construction of the test. The advisory panel or technical panel is meant to provide an outside viewpoint and I think that's important. I think we're not giving this technical panel any hammer to pound anybody with, but it is an opportunity for people from outside the state or inside the state, for that matter, to provide input to the system. I think we should preserve that. We should have that input. So I don't support the amendment. I don't

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think it goes the right way in either one of those directions. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Raikes. There are no other lights on. Senator Dubas, you are recognized to close. [LB1157]

SENATOR DUBAS: Thank you, Mr. President. I do hear and appreciate what Senator Raikes has said and, yes, it's not always bad having an outside set of eyes to come in and look. But again, I just feel very strongly that it's our teachers who have to make these tests works. It's our teachers who are ultimately held accountable for the success or the failure of these tests. I recognize them as the professionals that they are and still think that they would be best suited to serve in this capacity. So I ask the body's support for this amendment. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Dubas. You've heard the closing on AM2592. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB1157]

CLERK: 11 ayes, 17 nays, Mr. President, on the amendment. [LB1157]

SENATOR AGUILAR: The amendment is not adopted. [LB1157]

CLERK: I have nothing further on the bill, Mr. President. [LB1157]

SENATOR AGUILAR: Thank you, Mr. Clerk. Senator Raikes, you are recognized to close on LB1157. [LB1157]

SENATOR RAIKES: Thank you, Mr. President and members. [LB1157]

SENATOR AGUILAR: Excuse me. Excuse me, Senator. We have a motion on the floor. Hang on, Senator Raikes. [LB1157]

SENATOR RAIKES: Awe, and I had an eloquent speech prepared. What about my eloquent speech? [LB1157]

SENATOR AGUILAR: Mr. Clerk, for a motion. [LB1157]

CLERK: Mr. President, Senator Karpisek would move to indefinitely postpone LB1157. [LB1157]

SENATOR AGUILAR: Senator Karpisek, you are recognized to open on your motion. [LB1157]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Dierks

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pulled his IPP motion and I thought we should at least have a vote on it. We've talked about going too fast. I think this is going too fast. I know everyone probably has their own...their minds made up already, but I am not quite ready. Senator Chambers has talked about how he had to do things on his own, how he did things on his own. Senator Chambers, I'm sure, is a genius. I don't know that he's ever been tested and he wouldn't admit it if he was. It could be a statewide test. I do not like this bill. I apologize for throwing this up at the last minute. I will take this to a vote because I am so opposed to this bill. I've sat pretty quiet on it. I think we've had good discussion. I don't think that we are doing what our teachers and our administrators and the public is telling us to do. I have not had one e-mail from anyone, letter, anyone, to say that this is a good idea. I don't think that this is the way to go about it. I'm worried about the ranking system. I'm worried about the kids that can't pass this test and get left behind. I'm worried about the kids that don't pass this test and are looked down upon because they pulled the whole average down. I think if we're worried about educating children, we should worry about educating all of the children up to their potential. Not everyone is going to be a doctor or a lawyer, many will, but I think we need to teach kids and make their lives as good as we can. With this system, I do not think that we will teach them to be as good as they can. I think that we will just get them to where we decide, well, can they help our average or are they going to hurt our average? If they're going to hurt our average, let's cut them loose; they're going to fail anyway. I want to say again that I have talked to my administrators. I've done this for two years now, talked to them every two weeks during session; talked to my teachers. I've got tons of e-mails. They don't like it. They don't think it's right. It's better now with Senator Christensen's amendment. I didn't see anything on there that said how many teachers, what kind of committees. I apologize I didn't get my light on. I thought we were going to move a little slower on this. I don't want to drag this down. I want to get out of here just as bad as everyone else, but I don't think that moving this along quickly just because is the way to go about it. Thank you, Mr. President. [LB1157]

SENATOR AGUILAR: Thank you, Senator Karpisek. Senator Raikes, as the bill's introducer, you have the first opportunity to speak. [LB1157]

SENATOR RAIKES: Thank you, Mr. President, members. I oppose this motion. I do appreciate the discussion. I think the Christensen amendment has been an improvement. I think we're ready to go forward. I would urge you to oppose this motion so that we can go forward. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Raikes. Mr. Clerk, for an announcement. [LB1157]

ASSISTANT CLERK: Mr. President, the Retirement Committee will hold an Executive Session under the south balcony at 11:30. [LB1157]

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SENATOR AGUILAR: Thank you. Senator Chambers, you are next on the queue. You are recognized. [LB1157]

SENATOR CHAMBERS: Mr. President, members of the Legislature, (singing) oh, do you know the sausage man, the sausage man, the sausage man, who doesn't know the difference between sausage and hotdogs. But anyway, Senator Karpisek is doing a little hotdogging this morning. He can read trends. He saw the votes this morning and he knows that this bill is going to move, and he knows that his motion is going nowhere. And maybe I could say he is a good student. He has observed the maestro, and I say, what's that word, bravissimo. But what you have to realize also is that there is a time when some things are done. If Senator Karpisek would respond to a question or two, I'd like to pose them, if I may. [LB1157]

SENATOR AGUILAR: Senator Karpisek, would you yield to a question? [LB1157]

SENATOR KARPISEK: Yes, I will. [LB1157]

SENATOR CHAMBERS: Senator Karpisek, were you here when we voted earlier on these A bills on General File? [LB1157]

SENATOR KARPISEK: Yes, I was. [LB1157]

SENATOR CHAMBERS: The first one is LB736A, introduced by Senator Fulton to go along with his bill. Did you vote yes or no on that bill? [LB1157 LB736A]

SENATOR KARPISEK: I voted yes on that one. [LB1157]

SENATOR CHAMBERS: How many letters and e-mails did you get supporting that bill saying it's a good bill? [LB1157]

SENATOR KARPISEK: None. [LB1157]

SENATOR CHAMBERS: But you voted for it anyway. [LB1157]

SENATOR KARPISEK: I talked to Senator Fulton. [LB1157]

SENATOR CHAMBERS: So the fact that you didn't get a letter or e-mail saying this, that we're on now, is a good bill really is irrelevant in terms of how much quality the bill would have. Would you agree with that? [LB1157]

SENATOR KARPISEK: No. [LB1157]

SENATOR CHAMBERS: So then you're inconsistent, but you'd rather say

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unpredictable, correct? [LB1157]

SENATOR KARPISEK: (Laugh) You're right, I would rather say unpredictable. [LB1157]

SENATOR CHAMBERS: Okay. And that's what I'd expect from a man who's in the meat business but doesn't know the difference between a sausage and a hotdog. I think that's all the questions that I will ask, Your Honor. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Chambers and Senator Karpisek. Next up, Senator Dubas, you are recognized. [LB1157]

SENATOR DUBAS: Thank you, Mr. President, members of the body. When we debated this bill on first round, I brought a notebook to the floor with me that I had actively solicited input from my teachers and administrators and other people back in my district, simply because I felt like I didn't have a lot of background information to be making this kind of a decision. I had read the bill, I read material that I'd been given, but I still felt like, you know, I just really wasn't quite sure where I was at on it as far as my understanding went. And I was quite surprised by the number of e-mails that I received back, varying degrees of support or opposition to what we're currently doing. For the most part, I would have to say the teachers were in support of STARS and how it works right now, even those who were in strong support would admit that, yes, this was probably something that could be worked on and could be improved. But their concern was that maybe we were throwing the baby out with the bathwater, and that they had invested a lot of time and energy in coming up with this, at the direction of the Legislature to come up with this type of assessment. And there were concerns that, okay, we're not in compliance with No Child Left Behind, although our status on that is still pending. You know, just...I guess you could find arguments to support both sides of the issue, as is with most of the things that we talk about on the floor here. But then we passed LB653 last year and, while many of the e-mails that I received said, okay, I wasn't in great support of LB653, felt like that was maybe a step to help us improve our testing system in the state and that we've got people actively working on crafting those assessments right now, but again, as I stated earlier in some of my comments, the people that are actually working on these tests, that are coming up with crafting them and trying to make them an effective barometer of the teaching that's going on in our schools, feel like this is a moving target. We're headed in this direction, at the direction of the Legislature or the Department of Education, and we're this far down the road and now, no, we're going to go this direction, and so that unanimously, through those e-mails that I received, the frustration level was through the roof. These are professional people, take their job very seriously. They want to be held accountable. They want a measuring stick on how they're doing. They're concerned about how maybe some of that information might be used. I think Senator Pahls's comments earlier about we shouldn't just be assessing what information our kids are absorbing, we need to be assessing the school and the whole picture because there is so much more that's

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involved with a child's ability to learn, you know, the home that the child comes from, the community that the child is a part of, the school that the child goes to, the commitment of the staff. There's just so many things that go into what a true testing method shows and measures. And, you know, I would...I know that this bill has legs and this bill is moving forward, but I still am very concerned about where we will end up and where our teachers...how our teachers are going to feel as far as recognizing their abilities and their input onto this situation. We are ranking in the bottom as far as teacher pay. Our teachers can go to states surrounding us and receive substantial increases in pay. [LB1157 LB653]

SENATOR AGUILAR: One minute. [LB1157]

SENATOR DUBAS: We've stated before on this floor, when it comes to mental health services, that it's about money and where are we willing to put our money and determining our priorities. And I feel so strongly that the number one priority of this state should be providing a top-notch, quality public education to the children of our state and I feel like I'm letting them down right now. But whatever this body decides, I'm sure we will move forward and, again, I hope that the turf issues can be put aside and we can remember why we're here and who we truly are serving, and we are here to serve the children of our state. Thank you, Mr. President. [LB1157]

SENATOR AGUILAR: Thank you, Senator Dubas. Senator Pankonin, you are next. You're recognized. [LB1157]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I just wanted to stand up once this morning and join my colleagues, Senator Karpisek, Senator Dubas, and talk about this motion and the bill fairly quickly. Of the...there's a couple reasons why I'm going to vote for the IPP and against the bill, and I want to give you those two reasons. Reason number one is, of the school districts in my legislative district, I personally know many school board members, superintendents and teachers, and many of these relationships developed from two elected terms on our local school board at Louisville and had the opportunity from that to meet many of the folks from neighboring school districts and, of course, our staff and teachers in our district. And these folks, it's not only the e-mails that we've gotten but these folks, who I respect, who I served with, they are consistently against LB1157, and I think they've got a lot of good reasons why they are that have been talked about this morning and Senator Dubas has done a good job of that. But reason number two is I voted last night for the latest school aid formula knowing that the majority of the school districts in my legislative district will get less money than they get now, less than they get now. If I would have been totally parochial, I would have voted against that because my districts overall are going to get hurt. And now it's impossible for me to come back today to vote to advance LB1157 knowing that these districts are going to get less money than they have right now, and have a new program that they're going to have to work with and adjust to and try to get

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figured out. We've put a lot on these folks. A lot of the districts outside of the metro areas are getting less money and now we're putting out something else on them, and so that's why I'm...for those two reasons. I respect the people I've served with and they consistently tell me this is not a good policy change. And so it's not only e-mails; it's personal experience with folks that work with this day after day. So I ask for your support of the IPP and I'm going to vote against the bill. Thank you. [LB1157]

SENATOR AGUILAR: Thank you, Senator Pankonin. Senator Nantkes, you are next. You are recognized. [LB1157]

SENATOR NANTKES: Question. [LB1157]

SENATOR AGUILAR: You are the last speaker. (Laughter) Senator Karpisek, you are recognized to close on your motion to indefinitely postpone. [LB1157]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I thought Senator Nantkes had a question for me. (Laughter) Well, okay. I would just like to say that I think this is just...is going too far. Once again, I don't think that this is good for our state. I think the ranking system is going to be a train wreck. We're going to have people sending their kids here, there and everywhere chasing the better grades. I don't know that...I don't think this is also good for the kids that do better. I don't think that they're going to get the teaching that they need, the honor students. They're going to teach to this test. I don't think it's good for the kids that are below average because, if they don't make it up, they're going to get cut loose. I am glad that there's going to be some teachers making these tests because I wonder how much of it is going to be real-life skill. Are kids still going to learn how to balance a checkbook? Maybe they don't even do that anymore. It's been a few years since I've been there. I'm still not very good at balancing a checkbook either. But we need to teach real-life skills and we need to make sure that these kids can do the real-life skills. I think even the smallest schools, with their budgets getting hammered, are doing a good job with special ed, average students, and above-average students. We see it in the testing that we have some of the best test scores coming out of this state, but now we have to mess with it. It's not good enough. I don't think that we want to start ranking schools, especially when some of the schools in my district are seven miles apart. Do you think that people won't start shipping their kids one place or another because their school scored poorly, the other scored well? They're both learning the same thing. One day of testing? If we had one day of testing in here maybe even Senator Chambers wouldn't test so well if he was having a bad day, not that I've ever seen him had a bad day. One day is not enough in the grand picture of this whole equation. We're all after the same things--to help our kids, to do the best that we can. And our teachers are doing that, our administrators are doing that and I think this body is doing that but not by doing it this way. With that, Mr. President, I'd like to ask for a call of the house. [LB1157]

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SENATOR AGUILAR: There's been a request for a call of the house. All in favor vote aye; those opposed, nay. Record, Mr. Clerk. [LB1157]

ASSISTANT CLERK: 35 ayes, 1 nay to go under call, Mr. President. [LB1157]

SENATOR AGUILAR: The house is under call. All unexcused senators return to the Chamber. Senator Heidemann, Senator Kruse, the house is under call. Senator Karpisek, when all the senators are present, how do you wish to proceed? [LB1157]

SENATOR KARPISEK: I'd like to have a roll call vote in reverse order, please. [LB1157]

SENATOR AGUILAR: All senators are present and accounted for. Mr. Clerk, there's been a request for a roll call vote in reverse order. Please call the roll. [LB1157]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1156-1157.) Vote is 11 ayes, 31 nays on the motion to indefinitely postpone. [LB1157]

SENATOR AGUILAR: The motion failed. [LB1157]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB1157]

SENATOR AGUILAR: Thank you, Mr. Clerk. Are there any other speakers? Senator McGill for a motion. [LB1157]

SENATOR MCGILL: Mr. President, I move LB1157 to E&R for engrossing. [LB1157]

SENATOR FISCHER: (Microphone malfunction) Record vote, please. [LB1157]

SENATOR AGUILAR: There's been a request for a record vote...a board vote. All those in favor vote aye; those opposed, nay. Have you all voted that care to? Record, Mr. Clerk. [LB1157]

ASSISTANT CLERK: 31 ayes, 13 nays, Mr. President, on the advancement of the bill. [LB1157]

SPEAKER FLOOD PRESIDING [LB1157]

SPEAKER FLOOD: LB1157 is advanced to E&R for engrossing. Mr. Clerk, we will advance now at this time to LB973. I do raise the call. Oh, Mr. Clerk. [LB1157]

ASSISTANT CLERK: Mr. President, LB1157A, I do not have E&R amendments. [LB1157A]

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SPEAKER FLOOD: Senator McGill for a motion. [LB1157A]

SENATOR MCGILL: Mr. President, I move LB1157A to E&R for engrossing. [LB1157A]

SPEAKER FLOOD: You've heard the motion. All those in favor of advancing LB1157A to E&R for engrossing say yea. Those opposed say nay. It does advance to E&R for engrossing. At this time, given that it is 11:50 a.m., we will move to vote on advancement on any bills remaining on Select File that are listed above on this agenda and which have no amendments other than E&R amendments. Mr. Clerk, would you first, for the body's information, identify those three bills. [LB1157A]

ASSISTANT CLERK: Mr. President, LB889, LB958, and LB958A. [LB889]

SPEAKER FLOOD: We will first move to LB889. [LB889]

ASSISTANT CLERK: With respect to LB889, I do have E&R amendments. (ER8189, Legislative Journal page 955.) [LB889]

SPEAKER FLOOD: Senator McGill for a motion. [LB889]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB889]

SPEAKER FLOOD: You've heard the motion by Senator McGill. The question is, should the E&R amendments be adopted? All those in favor say yea. All those opposed say nay. The E&R amendments are adopted. [LB889]

ASSISTANT CLERK: I have nothing further on the bill. [LB889]

SPEAKER FLOOD: Senator McGill for a motion. [LB889]

SENATOR MCGILL: Mr. President, I move LB889 to E&R for engrossing. [LB889]

SPEAKER FLOOD: The question is, shall LB889 advance to E&R for engrossing? All those in favor say yea. All those opposed say nay. LB889 does advance to E&R for engrossing. Mr. Clerk. [LB889]

ASSISTANT CLERK: On LB958, I do have E&R amendments. (ER8191, Legislative Journal page 965.) [LB958]

SPEAKER FLOOD: Senator McGill for a motion. [LB958]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB958]

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SPEAKER FLOOD: You've heard the motion. There has been a request for a board vote on the adoption of the E&R amendments to LB958. (Laughter) Any objections are out of order. The question before the body is, should the E&R amendments to LB958 be adopted? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB958]

ASSISTANT CLERK: 28 ayes, 1 nay on the adoption of the E&R amendments. [LB958]

SPEAKER FLOOD: The E&R amendments are adopted. [LB958]

ASSISTANT CLERK: I have nothing further on the bill. [LB958]

SPEAKER FLOOD: Senator McGill for a motion. [LB958]

SENATOR MCGILL: Mr. President, I move LB958 to E&R for engrossing. [LB958]

SPEAKER FLOOD: The question before the body is, should LB958 be advanced to E&R for engrossing? Was there a motion for a board vote? Senator Erdman requests a board vote. The question before the body is, should LB958 advance to E&R for engrossing? All those in favor vote yea; all those opposed vote nay. Senator Ashford, for what purpose do you rise? [LB958]

SENATOR ASHFORD: Mr. Speaker, may I ask for a roll call vote, please? Call of the house, I'm sorry, and a roll call vote. I thought we were under call. We couldn't be under call on Select File. Excuse me. Thank you, Mr. President. [LB958]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB958]

ASSISTANT CLERK: 45 ayes, 0 nays to go under call. [LB958]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. The house is under call. Senator Pedersen, Senator Janssen, please check in. All senators are present and accounted for. There has been a request for a roll call vote. Mr. Clerk, please read the roll. [LB958]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1158.) Vote is 20 ayes, 20 nays on the motion to advance the bill, Mr. President. [LB958]

SPEAKER FLOOD: LB958 is not advanced. We will not take up the A bill on LB958. Mr. Clerk, at this time, we now move to Final Reading, budget and state claims bills. We are

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in Final Reading. Members, please remain in your seats. Before we move to the budget, Mr. Clerk, items for the record. [LB958]

ASSISTANT CLERK: Mr. President, an amendment to LB848 to be printed from Senator Erdman. Your Committee on Enrollment and Review reports LB1022, LB830, LB806, LB819, LB953, LB995, LB745, LB907, and LB308 to Select File. (Legislative Journal pages 1158-1167.) [LB848 LB1022 LB830 LB806 LB819 LB953 LB995 LB745 LB907 LB308]

SPEAKER FLOOD: Thank you, Mr. Clerk. We begin Final Reading with LB959E. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB959]

ASSISTANT CLERK: 35 ayes, 3 nays to dispense with the at-large reading, Mr. President. [LB959]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB959]

ASSISTANT CLERK: (Read title of LB959.) [LB959]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB959E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? You have 2 minutes and 50 seconds to decide. Record please, Mr. Clerk. [LB959]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1167-1168.) Vote is 39 ayes, 9 nays, 1 excused and not voting, Mr. President. [LB959]

SPEAKER FLOOD: LB959E passes with the emergency clause attached. Mr. Clerk, LB960E. The first vote is to dispense with the at-large reading. All those in favor of dispensing with the at-large reading vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB959 LB960]

ASSISTANT CLERK: 38 ayes, 4 nays to dispense with the at-large reading, Mr. President. [LB960]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk. [LB960]

ASSISTANT CLERK: (Read title of LB960.) [LB960]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB960E pass with the emergency clause attached? All those

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in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB960]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1168-1169.) The vote is 48 ayes, 0 nays, 1 excused and not voting. [LB960]

SPEAKER FLOOD: LB960E passes with the emergency clause attached. Mr. Clerk. We move now to LB961E. The first vote is to dispense with the at-large reading. All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB960 LB961]

ASSISTANT CLERK: 36 ayes, 4 nays to dispense with the at-large reading, Mr. President. [LB961]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB961]

ASSISTANT CLERK: (Read title of LB961.) [LB961]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB961E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB961]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1169-1170.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB961]

SPEAKER FLOOD: LB961E passes with the emergency clause attached. Mr. Clerk, we now move to LB1019. [LB961 LB1019]

ASSISTANT CLERK: (Read LB1019 on Final Reading.) [LB1019]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB1019E pass with the emergency clause attached? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB1019]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1170.) Vote is 46 ayes, 0 nays, 2 present and not voting, 1 excused and not voting, Mr. President. [LB1019]

SPEAKER FLOOD: LB1019E passes with the emergency clause attached. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB959E, LB960E, LB961E, LB1019E. Mr. Clerk, we now return to Select File, pursuant to the agenda. We will begin with LB973, introduced by Senator Raikes. Mr. Clerk. [LB959 LB960 LB961 LB1019 LB973]

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CLERK: LB973, Mr. President. I have Enrollment and Review amendments, Senator McGill. (ER8182, Legislative Journal page 871.) [LB973]

SPEAKER FLOOD: Senator McGill for a motion. [LB973]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB973]

SPEAKER FLOOD: The question before the body is, should the E&R amendments be adopted? All those in favor say yea. All those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB973]

CLERK: Mr. President, Senator Raikes has AM2340, with a note to withdraw. Senator Raikes would offer, as a substitute, AM2388. (Legislative Journal page 986.) [LB973]

SPEAKER FLOOD: AM2340 is withdrawn. Senator Raikes, you are recognized to open on AM2388. [LB973]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. LB973 deals with community college funding. This is the continued work on the funding formula this year, which we have dealt with. This amendment deals with two very technical issues having to do with the reference to the average need adjustment, which is stricken, and then also a reference or...yes, a reference to the property valuation used in the calculation of aid for each community college area. I will tell you that both of these technical changes are indeed technical. They're agreed upon by those impacted; namely, the community college areas. There is no additional fiscal impact on the state and, therefore, no A bill for LB973. I urge your adoption of this technical amendment. Thank you. [LB973]

SPEAKER FLOOD: Thank you, Senator Raikes. You've heard the opening on AM2388. There are no other lights on. Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is, should AM2388 be adopted? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB973]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes's amendment. [LB973]

SPEAKER FLOOD: AM2388 is adopted. [LB973]

CLERK: I have nothing further on the bill, Mr. President. [LB973]

SPEAKER FLOOD: Senator McGill for a motion. [LB973]

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SENATOR MCGILL: Mr. President, I move LB973 to E&R for engrossing. [LB973]

SPEAKER FLOOD: You've heard the motion. The question is, should LB973 advance to E&R for engrossing? All those in favor say yea. All those opposed say nay. The yeas have it. LB973 advances to E&R for engrossing. Mr. Clerk. [LB973]

CLERK: Mr. President, with respect to LB1092, I have a series of motions. I have a priority motion from Senator Harms. He would ask unanimous consent to bracket LB1092 until April 5 of 2008. [LB1092]

SPEAKER FLOOD: Any objections? LB1092 is bracketed until April 5, 2008. Next bill, Mr. Clerk. [LB1092]

CLERK: Senator McGill, LB777. I have E&R amendments, first of all. (ER8186, Legislative Journal page 919.) [LB777]

SPEAKER FLOOD: Senator McGill for a motion. [LB777]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB777]

SPEAKER FLOOD: You've heard the motion. The question is, should the E&R amendments to LB777 be adopted? All those in favor say yea. All those opposed say nay. The yeas have it. The E&R amendments are adopted. Mr. Clerk. [LB777]

CLERK: Senator Langemeier would move to amend with AM2587. (Legislative Journal page 1132.) [LB777]

SPEAKER FLOOD: Senator Langemeier, you're recognized to open on AM2587. [LB777]

SENATOR LANGEMEIER: Mr. President, members of the body, when we left LB777 it was a little heated, from what the Revenue Committee had done to this bill, to today's floor. We've had a number of discussions in the middle. Yesterday Senator Hudkins had another function that she could not be here yesterday afternoon, so I introduced this amendment on her behalf, so you had some time that it would be on the record so you could see it. At this time I would yield the opening to Senator Hudkins. [LB777]

SPEAKER FLOOD: Senator Hudkins, Senator Langemeier yields you 9 minutes, 30 seconds. [LB777]

SENATOR HUDKINS: Thank you, Mr. President, and thank you, Senator Langemeier, for introducing that for me. As he said, I needed to be in Omaha last night, and I wanted

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all of you to take a look at this amendment. The original bill, LB777, has to do with valuation of ag land property. Right now, there are some assessors in the state that are looking at, let's take 20 acres, and I think most of you have heard this before, but those of you who haven't I would like to go over it one more time. You have a 20-acre parcel and you have a rather nice house out there, \$300,000 house. And on the other 19 acres of that parcel, you are growing grapes or you are feeding bucket calves, or you have the 19 acres in conjunction with another field and you're growing corn or soybeans or whatever may be the case. That 19 acres is being used for an agricultural purpose, and, therefore, it should qualify for the lower valuation rate. What is happening is that the assessor is looking at that \$300,000 house and has decided that \$300,000 trumps whatever is being used with the other 19 acres. We wanted to get that changed. Right now the house on that acre is valued and has been valued at full market value. That's not the problem. The problem is, how do you value the rest of that property? There were some discussions on General File about home sites and farm home sites and primary usage and so forth. We promised that we would get together all of the interested parties and come up with something on Select File that we could all live with. We have done that. The language has been changed, and it should be on your computer, the amendment that was arrived at. The definition was changed slightly and we have said, in essence, that the house, the ground it sits on, any adjoining buildings will be excluded from that parcel. Here is the definition: Agricultural land and horticultural land means a parcel of land, and here's the new part, excluding any building or enclosed structure and the land associated with such building or enclosed structure located on the parcel, and then it goes on to say, which is primarily used for agriculture or horticultural purposes. So what that says is that on that 20-acre parcel your house, the land under it, the barns, the sheds, all of those are going to be subtracted from that original parcel. Those that are subtracted will be valued at full market value. And what the assessor will be looking at is whatever the acreage is that's left over and how that land is used. If it is used for agricultural or horticultural purposes, then it should qualify for the lowered valuation. If it is not being used for agriculture, if it is being used for a pasture for your own children's horses or you're using it for strictly recreation, then you don't get the decreased valuation. So in a nutshell, that is what the amendment does. I want to thank the Department of Revenue, the Revenue Committee, NACO and other interested groups that had an interest in this bill and in this amendment. I think that we have come to something that we can all agree on. I am happy with this amendment. I think that the Revenue Committee is, and so therefore I would close. But I would give the rest of the time back to Senator Langemeier. [LB777]

SPEAKER FLOOD: (Microphone malfunction)...Langemeier, you have 4 minutes, 50 seconds. [LB777]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. I did not, when I started this opening, I did not say, I support AM2587 and would ask you to do the same. Thank you. [LB777]

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SPEAKER FLOOD: Thank you, Senator Langemeier. Senator Janssen, you're recognized. [LB777]

SENATOR JANSSEN: Thank you, Mr. Speaker, members of the Legislature. As Chair of the Revenue Committee, I do support the amendment that was brought forth by Senator Langemeier. It explains the situation and I ask for your support of the amendment. [LB777]

SPEAKER FLOOD: Thank you, Senator Janssen. Senator Gay. [LB777]

SENATOR GAY: Thank you, Mr. President. I support the amendment and the bill, and this is a difficult situation, but it allows some flexibility. What Senator Hudkins is doing here, I think, allows some real flexibility, because there is more and more opportunities like this that board of equalizations have to deal with and county assessors deal with. I think she took on a difficult subject matter, because it is a complex subject, and kind of made this bill a lot better by doing that. But I do think this will allow some flexibility by county board of equalizations when they arise and come across these difficult situations. It gives them more options to deal with it. So I would encourage your support. Thank you, Mr. President. [LB777]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Raikes. [LB777]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Senator Hudkins, if I could address a couple questions to you, please. [LB777]

SPEAKER FLOOD: Senator Hudkins, will you yield to a question of Senator Raikes? [LB777]

SENATOR HUDKINS: Of course. Yes. [LB777]

SENATOR RAIKES: Senator, the current statute deals with the primary use of the land and defines basically agricultural or horticultural use as primarily used for agriculture or horticulture for the parcel. So this amendment takes out the buildings and then you look at the primary use of the rest of the property. So to give you an example, if you had a plot of 20 acres, as you mentioned, it had a house and maybe an outbuilding, that part is taken out. Let's say there's 18 acres that's growing prairie hay. Is that 18 acres then subject to greenbelt? [LB777]

SENATOR HUDKINS: It depends, Senator Raikes, on what that prairie hay is used for. If the farmer is, or if the landowner is, making that as hay for his own animals, no. If he is making that hay and selling it, yes. [LB777]

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SENATOR RAIKES: So if he had animals on another farm or something, he took hay off of that and fed it to the other animals, it would not count for greenbelt? [LB777]

SENATOR HUDKINS: It would if he's in a commercial horse application. But if it's just, you know, two or three horses for the kids, no. But if he is growing horses for sale to other parties and he's making that hay to feed those horses so that he may sell them, yes. [LB777]

SENATOR RAIKES: Let me ask you this: I think that now, the way the statute is, that there can be greenbelt property within a city limit. Is that correct? [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR RAIKES: So suppose you have someone that lives, for example, in the middle of Lincoln, has a big yard. At the back end of the yard they have a garden where they grow some tomatoes. They take the tomatoes to the market down at the Haymarket or whatever, sell the tomatoes. Is that backyard then subject to greenbelt? [LB777]

SENATOR HUDKINS: No, that's associated with the house. [LB777]

SENATOR RAIKES: Well, but... [LB777]

SENATOR HUDKINS: That is a garden. They are growing the garden for themselves. They are incidentally selling excess tomatoes. [LB777]

SENATOR RAIKES: How do you draw the distinction between incidental and commercial? [LB777]

SENATOR HUDKINS: Good question. But the county board, when all of the appeals came in, they asked the people several questions. One of those is, do you have a USDA, a farm service number? The second question was, do you file a Schedule F, which is the income tax form that tells whether you had a profit or loss in farming? [LB777]

SENATOR RAIKES: Well, I understand you're going through this process, but presumably this is providing direction to county boards. So what does a county board assume about a house in town that has a big backyard where they raise tomatoes? [LB777]

SENATOR HUDKINS: The county board won't make that assumption; the assessor will. [LB777]

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SENATOR RAIKES: And so is there direction here for the assessor in that situation? [LB777]

SENATOR HUDKINS: It is up to the landowner to prove that this is a horticultural operation. And if I may continue, I said there were three things. [LB777]

SPEAKER FLOOD: One minute. [LB777]

SENATOR HUDKINS: The first was the farm service number. The second is if it's growing agricultural or horticultural products. The third one is, how do you use that land? Are you using it for recreation? Are you using it for ag? What are you using it for? [LB777]

SENATOR RAIKES: Well, okay, and I...thank you, Senator Hudkins. I think the current statute allows the assessor to determine the primary use, and the assignment of greenbelt is on that basis. This has not been a recent change in statute. It's not clear to me that we should not allow the statute to be implemented as it now is. It seems to me this is a premature change in statute, and particularly with the confusion that may exist on tomatoes in your backyard. Thank you. [LB777]

SPEAKER FLOOD: Thank you, Senator Raikes. Senator Synowiecki. [LB777]

SENATOR SYNOWIECKI: Thank you, Mr. Speaker, members. I just have a quick question for Senator Hudkins, if she would yield. [LB777]

SPEAKER FLOOD: Senator Hudkins, will you yield to a question from Senator Synowiecki? [LB777]

SENATOR HUDKINS: Yes. [LB777]

SENATOR SYNOWIECKI: Senator Hudkins, can you help me understand, you know, what we're doing here? I see the new language, which begins in line 14: Agricultural and horticultural land means a parcel of land, excluding any buildings or enclosed structure on the land associated with such building or enclosed structure located on the parcel, and then it goes on, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land. Okay. And then we strike...then we strike: Agricultural land and horticultural land does not include any land directly associated with any buildings or enclosed structure. I'm trying to...it strikes me that the stricken language and the new language are essentially similar. What are we doing that... [LB777]

SENATOR HUDKINS: They are similar, Senator Synowiecki, in that they are both trying

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to say that agricultural land doesn't include any land on which there is a house or a building. Going on with that, what the problem was is that the assessor was looking at that parcel and determining that that house was the primary use of that parcel, so the whole thing gets valued at full market value. And we are saying that, no, land that is used for horticultural and agricultural purposes should be valued separately from that house and buildings. [LB777]

SENATOR SYNOWIECKI: I guess I'm just not understanding this. It seems that the language that we're striking says that, and we're putting in new language that essentially is very similar in meaning, to me, to the stricken language. [LB777]

SENATOR HUDKINS: It is. [LB777]

SENATOR SYNOWIECKI: And I guess I'm trying to pinpoint, you know, what is the usefulness of this change. [LB777]

SENATOR HUDKINS: It has to do with where it's placed. [LB777]

SENATOR SYNOWIECKI: Okay. Thank you, Senator. [LB777]

SENATOR HUDKINS: There are...90 counties agree that this is how it should be done. [LB777]

SENATOR SYNOWIECKI: Okay, thank you, Senator Hudkins. [LB777]

SPEAKER FLOOD: Thank you, Senator Synowiecki. Senator Kopplin. [LB777]

SENATOR KOPPLIN: Thank you, Mr. Chairman and colleagues. I listened to Senator Raikes for a minute. I thought, I'm kind of going to be in agreement with Senator Raikes. That's a new experience. But then he talked about tomatoes and I was thinking of raising zucchinis, because I'm not so sure that under this I can't use my backyard to raise zucchinis and bring them to the market everyday. Why shouldn't I have that same break? You see, what bothers me about this bill, I know a lot of people that go out and buy acreages, 5, 10, even 20. They're buying those not for agricultural purposes. They get this land because they like the space, they want to put their house on there. Maybe they have a few hobbies. But it is not agricultural. I think we're just taking a bill or a law that is working, hasn't had time to even work completely, and saying we want to give these people a break again. Well, when you give these people a break again, you know, taxes get made up by somebody else, and that's me as the homeowner. So maybe I should be allowed to raise zucchinis and sell them and put part of my land as agriculture. I don't think we need to do this bill right now. I think we can let things go. It's not going to hurt the process that's going on right now at all. Thank you very much. [LB777]

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SPEAKER FLOOD: Thank you, Senator Kopplin. Seeing no other lights on, Senator Langemeier, you're recognized to close on AM2587. [LB777]

SENATOR LANGEMEIER: Thank you, Mr. President. On behalf of myself and Senator Hudkins, I'd ask you to support AM2587. Thank you. [LB777]

SPEAKER FLOOD: You've heard the closing on AM2587. The question is, shall this amendment be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who wish to? Senator Hudkins, for what purpose do you rise? [LB777]

SENATOR HUDKINS: I would ask for a call of the house, please, and a roll call vote. [LB777]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Senator Hudkins, for what purpose do you rise? [LB777]

SENATOR HUDKINS: I would like the roll call to be in reverse order, please. [LB777]

SPEAKER FLOOD: Mr. Clerk, please record. [LB777]

CLERK: 25 ayes, 0 nays, Mr. President, to place the house under call. [LB777]

SPEAKER FLOOD: 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 Pedersen, Senator Engel, Senator Heidemann, Senator Loudon, Senator Dubas, Senator Wallman, Senator Rogert, Senator Pankonin, Senator Preister. The house is under call. Senator Preister, Senator Pankonin, Senator Dwite Pedersen, Senator Heidemann, please return to the floor. The house is under call. Senator Pankonin, please return to the floor. Senator Heidemann was excused. Senator Pankonin, please return to the floor. The house is under call. Senators Langemeier and Hudkins, all senators are present and/or accounted for. We will proceed with a roll call vote in reverse order. Mr. Clerk, please read the roll. [LB777]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal pages 1171-1172.) [LB777]

SPEAKER FLOOD: Mr. Clerk, please record. [LB777]

ASSISTANT CLERK: The vote is 26 ayes, 5 nays on the adoption of Senator Langemeier's amendment. [LB777]

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SPEAKER FLOOD: AM2587 is adopted. Mr. Clerk. [LB777]

CLERK: Nothing further on the bill, Mr. President. [LB777]

SPEAKER FLOOD: Senator McGill for a motion. [LB777]

SENATOR MCGILL: Mr. President, I move LB777 to E&R for engrossing. [LB777]

SPEAKER FLOOD: You've heard the motion. The question is, should LB777 advance to E&R for engrossing? All those in favor say yea. All those opposed say nay. The yeas have it. LB777 advances to E&R for engrossing. Mr. Clerk, we now move to LB952. I do raise the call. [LB777 LB952]

CLERK: LB952, Mr. President. I have Enrollment and Review amendments, first of all. (ER8173, Legislative Journal page 746.) [LB952]

SPEAKER FLOOD: Senator McGill for a motion. [LB952]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB952]

SPEAKER FLOOD: You've heard the motion. The question is, should the E&R amendments be adopted? All those in favor say yea. All those opposed say nay. The yeas have it. The E&R amendments are adopted. Mr. Clerk. [LB952]

CLERK: Senator Lathrop would move to amend with AM2597. (Legislative Journal page 1172.) [LB952]

SPEAKER FLOOD: Senator Lathrop, you're recognized to open on AM2597. [LB952]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Very simple, you'll recall that LB952 is the administration subpoena bill. The bill is responsive to an Attorney General Opinion that said the Nebraska State Patrol had power, unlimited power, and without limitation authority to send administrative subpoenas out without any judicial oversight or the oversight of attorneys--county attorneys or even the Attorney General's Office. That passed on first round with more than enough votes. In the meantime, I've had a conversation with the State Patrol who had concerns, of course, that the authority they thought they had to send these out was being eliminated. We have reached a bit of a compromise. They will support LB952 if I permit an expansion of the county attorney's ability to issue administrative subpoenas which are submit to some limitation, and so the amendment today, which is AM2597, eliminates a limitation on the crimes to which the county attorney's office and the Attorney General's Office can send out administrative subpoenas. I am comfortable with that trade-off, because I believe

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the authority to issue administrative subpoenas should belong to the county attorney and the Attorney General, and not to the State Patrol, if they ever had that in the first place. So I would encourage your support of AM2597. Thank you. [LB952]

SPEAKER FLOOD: Thank you, Senator Lathrop. You've heard the opening. Senator Lautenbaugh. [LB952]

SENATOR LAUTENBAUGH: Thank you, Mr. Speaker, members of the body. I rise in support of this amendment. I thank Senator Lathrop for bringing it. I think it preserves a valuable tool while also putting reasonable limits and safeguards in place, and I won't belabor the point. I just wanted to thank Senator Lathrop and support the amendment. Thank you. [LB952]

SPEAKER FLOOD: Thank you. Senator Ashford, you're recognized. [LB952]

SENATOR ASHFORD: Yeah, thank you, Mr. President. Very quickly, I would second Senator Lautenbaugh's comments. Senator Lathrop has worked hard on this issue, and I appreciate his willingness to work with the interested parties. It is a reasonable restriction or check on the ability of government to have access to private records. It's important that we set that standard in our state, and at the same time ensure effective law enforcement and prevention of crime. And with that, I would strongly urge the advancement of the bill and the adoption of the amendment. Thank you. [LB952]

SPEAKER FLOOD: Thank you, Senator Ashford. There are no other lights on. Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question is, shall AM2597 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB952]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Lathrop's amendment. [LB952]

SPEAKER FLOOD: AM2597 is adopted. [LB952]

CLERK: I have nothing further on the bill, Mr. President. [LB952]

SPEAKER FLOOD: Senator McGill for a motion. [LB952]

SENATOR MCGILL: Mr. President, I move LB952 to E&R for engrossing. [LB952]

SPEAKER FLOOD: You've heard the motion. The question is, shall LB952 advance to E&R for engrossing? All those in favor say yea. All those opposed say nay. The yeas have it. It is advanced. Mr. Clerk. [LB952]

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CLERK: LB1049. Senator McGill, I have Enrollment and Review amendments, first of all. (ER8179, Legislative Journal page 828.) [LB1049]

SPEAKER FLOOD: Senator McGill for a motion. [LB1049]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1049]

SPEAKER FLOOD: You've heard the motion. The question is, should the E&R amendments to LB1049 be adopted? All those in favor say yea. All those opposed say nay. The yeas have it. The E&R amendments are adopted. Mr. Clerk. [LB1049]

CLERK: Senator Erdman would move to amend, AM2296. (Legislative Journal page 905.) [LB1049]

SPEAKER FLOOD: Senator Erdman, you're recognized to open on AM2296. [LB1049]

SENATOR ERDMAN: Mr. President, members of the Legislature, AM2296 is a result of conversations that Senator Fulton, Senator Preister, myself, and other interested parties, including sportsmen, the Cattlemen, the Farm Bureau--there were other interested parties there that didn't represent a specific organization--but we met in my office, as I had promised Senator Preister, after the advancement of LB1049 to Select File. We discussed some possibilities, some alternatives to the way that the bill was drafted, and I have e-mailed you. You should have received this, and it's not on pretty colored paper, but if you open up the attachment in your e-mail it will display in pretty color, because that's a more cost-effective way for me to get the information to you, the specifics of how this amendment works. If you look at the statute that we're talking about, Section 37-101 deals with the responsibilities and the qualifications to serve on the Commission for Game and Parks. Section 37-102 deals with the eight districts that we currently have designated in statute for appointment. There are different provisions that have to be met for the entire commission by its members for it to be legal. For example, there have to be at least three individuals engaged in agricultural pursuits. There are other provisions about their knowledge, and so I took some of the language from Senator Preister to clarify that they have to be well-informed and interested in the matters of the jurisdiction of the Game and Parks Commission. We have adjusted the dates of appointment so that every time an appointment is made to the commission, there are multiple appointees at that time. Right now we have a situation where an individual comes up for reappointment or...excuse me. An individual comes up for appointment, they're the only person that comes up for appointment. And if they are filling one of those required responsibilities as an individual pursuing agricultural pursuits or those other requirements as far as political party, the Governor has no flexibility and they have to narrowly appoint somebody that fits that gap. What this amendment does is ensures that there are two people at a minimum, and actually in one year three people, that could be appointed at the same time. So you don't have to

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appoint the same person, you can spread around the representation better, it provides better flexibility to the commission. There's an additional individual that will be added. That individual that will serve on the commission is a statewide appointment. They are not bound by a district. There are eight districts; we are adding an at-large position, if you will. That allows for flexibility with the commission, that allows the commission to actually have a broader representation. One of the arguments made, I think, by Senator Preister was, is that parks and other things are truly a statewide interest and potentially that appointment could come from somebody that has a specific interest in that area. It could be somebody from an urban area, it could be someone from a rural area, but what it's essentially designed to do is to make this process more flexible to ensure that we're able to appoint the best people. The other thing that is retained in the amendment is that an individual would be allowed to be reappointed to one additional term. It doesn't matter when they have previously served, but it says that if they have already served two terms, they don't get a third. So everybody is held to two terms, no matter when they serve them and no matter how they serve them. That's consistent with all but one of the noncode agencies that we have that have commissions in the state of Nebraska. That is the underlying purpose of the bill, is accountability and conformity, and by adopting AM2296 we get there. If you look at the spreadsheet that you have, it gives you the list of the existing commissioners, when their terms expire. The fourth column says amendment term expire, that's when their terms would be extended to. The fifth column talks about the length of their term. In the year 2012 the terms go from five years to four, so that way, when you look in the next column where the pretty colored divisions are, that shows the multiple appointees. It also shows their position, if they are in agricultural pursuits, what their political party is, and currently where they're representing or where they're from. It was a compromise. It was a discussion. It was over three weeks ago, and we have worked very hard, Senator Preister and myself and others, to try to include all of the interested parties that have an interest. And we have done that. I am fully aware that probably not everybody feels like their opinion were ultimately heard, but I assure them, their opinions were represented. Not everybody got what they wanted, which is probably a good result of a compromise, but I think the ultimate goal is still achieved--that's better accountability, better flexibility, and more conformity with this commission with other noncode agency commissions to ensure that it's doing its job and is not a reward or appointment that's limited to a certain few because of the statute. The only other technical thing that it does is that it changes the political party affiliation from four to five from the same political party, and that's logical because you would have an increase in the commission, and so that's the way that that addition is made. I'd be happy to answer any questions. Again, I visited with Senator Preister, Senator Chambers. I believe they are in support. It was reflected to me at that meeting that they are supportive of the amendment, those interested parties, and I'm still holding the same because they have not contacted me directly, those parties, and believed that in that time we were negotiating in good faith and represent that to you, as members of the Legislature. I would encourage your adoption of AM2296. [LB1049]

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SPEAKER FLOOD: Thank you, Senator Erdman. Senator Preister, you're recognized. [LB1049]

SENATOR PREISTER: Thank you, Mr. President, friends. I do rise in support, and I thank Senator Erdman for the time. He did say we would be able to get together and, true as he has been to his word in the past, we were able to do that. He certainly looked out for agricultural interests, in making sure that those who have the resources, at least the agricultural resources, were definitely represented. And I think this is a compromise. It does add the additional at-large member to the Game and Parks Commission, which could be an ag interest representative. It could also be urban. It's left, it's flexible. I think the other changes that, as in his usual thorough way, Senator Erdman fully explained, the implications and all of the aspects of the changes, so that there is the flexibility in the bill for appointments in these different areas in a way that allows the Governor not to be so restricted as they have been in the past. I think that's a good thing. The at-large member, I think, is a good thing. There is an additional good thing, because there's one more person that can be appointed. So it provides another opportunity for an appointment to a position that is highly sought after. I hope that that position can be somebody who has more of an interest in parks, because so much focus has been on the game aspect of Game and Parks, but over half the money, over half the resource is financial, and that largely comes from urban areas and is dealing with parks. This provides the opportunity for that, and I hope in reality that all of the interests come together in recommending an appointment that fits that category. I fully support AM2296 and I thank Senator Erdman for the meetings, the discussions, and the work to bring the compromise to this point and would certainly encourage all of my colleagues to also vote green on the amendment and then ultimately the bill. Thank you. [LB1049]

SPEAKER FLOOD: Thank you, Senator Preister. Senator Carlson. [LB1049]

SENATOR CARLSON: Mr. President, members of the Legislature, I'd like to address a couple of questions to Senator Erdman, if he would yield. [LB1049]

SPEAKER FLOOD: Senator Erdman, will you yield to a question from Senator Carlson? [LB1049]

SENATOR ERDMAN: I will. [LB1049]

SENATOR CARLSON: Senator Erdman, I've come to realize that appointment to the Game and Parks Commission seems to be one of the prized appointments in the state, and sometimes I would wonder why, but that's the way it is. And since you introduced LB1049, I have received contacts by a number of people in opposition to it, and so I'm going to ask you to restate something, because you may have and I missed it. But in this meeting that you had, when did that occur, to come up with your amendment? [LB1049]

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SENATOR ERDMAN: I have that date, Senator Carlson, because of the e-mails that I have, but I don't have it off the top of my head. It was within days after the first advancement of this bill to Select File, and it's been at least two weeks. [LB1049]

SENATOR CARLSON: Okay. And who did you say attended that meeting? [LB1049]

SENATOR ERDMAN: There were representatives from the Sportsmen's Council, there were representatives from Cattlemen, Farm Bureau, Senator Preister, Senator Fulton, myself. There were other individuals there that weren't necessarily representing...Izaak Walton League was there. There were individuals that weren't exactly representing any specific organization, and since that meeting I've had conversations with Game and Parks commissioners, both current and prior, about the contents of the amendment. [LB1049]

SENATOR CARLSON: Okay, and you indicated there wasn't total agreement, but in that conversation with present commission members and former commission members...and your feeling that their...is their opposition minimal or how would you interpret that? [LB1049]

SENATOR ERDMAN: I would say it's mixed, Senator Carlson. I will tell you that there are some people, and I don't intend to get into all of the details here, for their sake and for the sake of time, but there are some people that don't want any change whatsoever. I can't help those people. There are some people that like the idea, that have some different ideas, but ultimately that was not an option because of the opportunity that we had to sit down and have a conversation between these groups. And I will tell you that a majority of those people that are either former or current commissioners that I've also visited with are also members of a lot of these organizations, and they know their opinion, as well. So they're a mixed opinion. There are former and current commissioners that are overly supportive, there are former and current commissioners that would like to see things done differently, and there are some that don't want any change whatsoever, and again, I think that's the least palatable option and I think that, in fact, is not an option at all. [LB1049]

SENATOR CARLSON: Okay. Thank you, Senator Erdman. [LB1049]

SENATOR LANGEMEIER PRESIDING [LB1049]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Fulton, you are recognized, followed by Senator Engel. [LB1049]

SENATOR FULTON: Thank you, Mr. President. I rise briefly to express support for AM2296 and LB1049. I want to echo what Senator Erdman has said. There were some

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concerns that were expressed on the part of sportmen's interests, and Senator Erdman did have a meeting in which he tried to accommodate those requests. Again, I think not everyone probably got exactly what they wanted, but I think everyone got enough of what they wanted, such that this is a reasonable compromise, and I just want to rise to make that known and to show support for AM2296, as well as LB1049. I hope we can move it forward. Thank you, Mr. President. [LB1049]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Engel, you're recognized. [LB1049]

SENATOR ENGEL: Mr. President, members of the body, I just have a quick question to ask Senator Erdman, if he would respond. [LB1049]

SENATOR LANGEMEIER: Senator Erdman, would you yield? [LB1049]

SENATOR ERDMAN: Yes, Mr. President. [LB1049]

SENATOR ENGEL: You're always asking technical questions. Well, I have a small one here. Who determines who shall be well-informed and interested in matters under the jurisdiction of the commission? Are they given a test, or how is that figured out? [LB1049]

SENATOR ERDMAN: Well, you and I do, Senator Engel, to be honest with you, because that's in existing language. The current language says the members of the commission shall be legal residents and citizens of Nebraska and shall be well-informed. The existing language is on wildlife conservation and restoration. They're supposed to be well-informed now, so the Governor has to make that decision when they're making the appointment, and, ultimately, their confirmation depends on a majority of the members of the Legislature. So the person giving them that test, if you will, are the 49 elected members of the Nebraska Legislature. [LB1049]

SENATOR ENGEL: Thank you very much. That was very informative. [LB1049]

SENATOR ERDMAN: My pleasure. [LB1049]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Karpisek, you're recognized. [LB1049]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Could I ask Senator Erdman a couple questions, please? [LB1049]

SENATOR LANGEMEIER: Senator Erdman, would you yield? [LB1049]

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SENATOR ERDMAN: I will. [LB1049]

SENATOR KARPISEK: Senator Erdman, I didn't hear all of your introduction. I apologize. I'm sure it was concise. But my dentist is a member of the Game and Parks Commission, and he does have some reservations on this, and I appreciate you for being honest that there are some people that aren't very happy about this, because he would be one of them and I would have hated to call you on that. One of the biggest...his biggest and my biggest concerns about this is taking out the wordage that two members shall reside on a farm or ranch. Can you help me out on that? [LB1049]

SENATOR ERDMAN: I can, and before I answer that, Senator Karpisek, I will tell you that Dr. Pinkerton and I have discussed this, shortly after the meeting Senator Preister had, out here in the Rotunda. And that was over a week and a half ago. We had a conversation about what the amendment does. At that point he understood. He talked about a completely different series of issues that may be affected by this, but aren't directly affected by this. Within the last few days he has called; my office has called and talked to him, back and forth. As you can imagine, going late into the night, I myself haven't called him back, but I have had direct conversation with him when I presented him this amendment. Let me answer your specific question about the language of the producers. We have a dynamic now--and you're probably as well aware of this as anyone, being on the Ag Committee--not everybody who farms lives on the farm anymore. People move to town, but they're still farmers. You still have those landowners that are actually engaged in agricultural pursuits that no longer reside on their property where they actually cultivate the land. The intent of the language, by striking those provisions that they actually have to come from the farm, is that it provides flexibility, because of the trends in agriculture, to be able to reflect that those people are farmers or they're engaged in agricultural pursuits and they should be allowed to serve, or the commission should recognize the growing trends in their location of residence. But ultimately, it's based on their agricultural pursuits. And so it's just a way of providing better flexibility to ensure that those ag producers or those individuals pursuing agricultural pursuits have the opportunity to be appointed, just as they would otherwise. [LB1049]

SENATOR KARPISEK: And I understand that, Senator Erdman, but as it was, it said at least three of the commission shall be actually engaged, and at least two shall be...live on the farm. So there was room for one before, and now we're taking it out. I just don't know if this sends the message to people that actually live on the land that, well, we don't...I don't know how it's going to go over with them, I guess, is my question. [LB1049]

SENATOR ERDMAN: Well, I can tell you, from visiting with a lot of organizations and a lot of producers that have followed this area, it will go over well with them, because they were represented in our conversations. They recognize that their interests have been

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protected, but it provides better flexibility for individuals in their line of work and in their industry to be appointed. It doesn't dilute their ability to have their say and their representation on the commission. It simply says that we can accomplish that just as effectively with this flexibility and continue to ensure their interests. [LB1049]

SENATOR KARPISEK: All right, Senator Erdman. I see where you're going. I don't know that I can actually go along with that. When I showed you the amendment pad, I was going to try to take that out. I'm sure you wouldn't want that, because I know you've worked hard on this. But I don't know that I can support this. Dr. Pinkerton has been...I talked to him this morning and he is a little bit worked up still. So I appreciate you answering the questions. Thank you, Mr. President. [LB1049]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Erdman, your light is next, however, it is the last light. So it's your option, whether you'd like to speak or close. [LB1049]

SENATOR ERDMAN: I would choose to close, Mr. President. [LB1049]

SENATOR LANGEMEIER: Senator Erdman, you're recognized to close on AM2296. [LB1049]

SENATOR ERDMAN: Mr. President, members of the Legislature, let me share something with my colleague from Wilber. There is more to this amendment than his one provision. The same argument can be made on other bills. The reality is, is that as a whole, as a package, this amendment represents a more realistic and appropriate way to provide oversight and commissioners to the Game and Parks Commission. If I thought or if the members that I visited with from numerous ag organizations or the agricultural producers themselves thought that in any way, in any way, that their representation was being diluted, this amendment would not be here. This would not be included in this amendment. This is a difficult conversation for a lot of people. In the event that we have another conversation later this session about another item that I've been working on, that, too, will be a difficult conversation for a lot of people, because it potentially results in change. This is a change for the better, this is a change that provides better accountability and, most importantly, better opportunities for Nebraskans to serve while still preserving the interests that we would like to have on the commission. Senator Karpisek, again, if this was not something that made sense to the folks in the country, it would not be in this amendment, because I assure you, the people that follow the Game and Parks Commission, the people that were at the meeting on both sides know exactly what happens on the commission, and they want to make sure they have the best people, and they want to make sure that they have all interests represented. The overriding value of this amendment is its entirety. It's not simply saying, well, I don't like that idea because it takes this away. Agriculture is changing. People are not living on the farm, but those people are still gaining their

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income...they're bona fide farmers. They're bona fide individuals engaged in agricultural pursuits. That's their livelihood. Are we going to disqualify them or make it harder for those individuals to be represented simply because they've changed the address at which they live? That's essentially what the law does now. That's essentially the concern of some. It's a valid concern, but it's a matter of change. It's not a matter of undermining the representation on the commission. And any time you change any of these commissions, especially this one, there's a great deal of interest. Specifically, the components of this amendment are as follows: The ninth commissioner, the statewide individual, would be appointed in January of '09. The effective date of the terms would become four years...excuse me, the four-year terms would begin in 2012. As Senator Karpisek has pointed out, you strike the language of living on the farm or ranch, but you maintain the ag producer requirement. There's also provisions about county alternating language which was put in, which is agreed to be unnecessary by all of the parties, to ensure that we have the best people serving, and ultimately, the final part of this is that we extend those commissioners' terms that are currently serving in Districts 4, 6, and 8 to come up at the same time as other commissioners, to ensure flexibility in appointment. This is a good solution. It's not a good solution because it's mine; it's a good solution because the interested parties got together and said, this makes improvements. If I were simply going to write an amendment that did what I wanted it to do, it probably wouldn't look exactly like this. But I'll be honest with you, I did write this amendment. It was my idea to find middle ground. I believe we're there. Not everyone is happy, but I will tell you most people believe it is a giant step forward to ensure flexibility for appointments, to ensure accountability of the commission, and to provide conformity with this commission, for a noncode agency, with others. I would encourage your support of AM2296. Thank you, Mr. President. [LB1049]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on AM2296. The question before the body is, shall AM2296 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1049]

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Erdman's amendment. [LB1049]

SENATOR LANGEMEIER: AM2296 is adopted. [LB1049]

CLERK: I have nothing further, Mr. President. [LB1049]

SENATOR LANGEMEIER: Senator McGill for a motion. There's been a request for a roll call vote from Senator Johnson. Is that correct. [LB1049]

SENATOR JOHNSON: No. [LB1049]

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SENATOR LANGEMEIER: Senator Engel asked for the roll call vote? Okay. Senator Erdman, you'd request a call of the house? There has been a request for a call of the house. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1049]

CLERK: 25 ayes, 0 nays, Mr. President, to place the house under call. [LB1049]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Avery and Senator Pankonin, please return to the Chamber and record your presence. The house is under call. All members are present and accounted for. There has been a request for a roll call vote in regular order. The question before the body is, shall LB1049 advance? Mr. Clerk, call the roll. [LB1049]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1173.) The vote is 32 ayes, 1 nay, Mr. President. [LB1049]

SENATOR LANGEMEIER: LB1049 does advance. With that, I raise the call. Mr. Clerk, next item on the agenda, LB765. [LB765]

CLERK: LB765. Senator McGill, I have no E&Rs. I do have other amendments, however. Senator Erdman would move to amend, AM2526. (Legislative Journal page 1139.) [LB765]

SENATOR LANGEMEIER: Senator Erdman, you are recognized to open on AM2526. [LB765]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. When we discussed LB765 on General File, there were concerns that were brought up by hospitals outside of the Lincoln area. One of the concerns came specifically from Regional West Medical Center. I believe also there were concerns from Norfolk and other parts of the state. Since that vote on General File there were meetings to discuss some possible alternatives on the certificate of need side for rehabilitation beds. Out of that meeting came the discussion of some flexibility for those areas of the state that would be affected, and therefore, AM2526 is before you. Currently, the certificate of need law has a moratorium on adding new rehabilitation needs, except for in specific circumstances. The hospitals that are affected by that moratorium can get around that, if they prove there is a need for additional rehabilitation beds. The need is an objective standard and is defined simply in occupancy. So unless the statewide rehabilitation bed occupancy is at 90 percent, under the current law the hospital cannot prove a need. The standard works well for the urban settings, and there's only one hospital right now with rehabilitation beds west of Kearney. That is Scottsbluff, and it serves not only the western part, but it also serves parts of eastern Wyoming, as well. You recall that there

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was a handout from Senator Gay, and I believe he's going to pass that around again. One will display the districts and regions of the--I'm going to get this wrong if I don't say--health planning region. The other one will likely be--if you don't have this at your disposal, we can get this for you--the location of current rehabilitation beds as of 2007, and it reflects the reality that I just said, in that everything west of Kearney essentially is either served by Kearney or served by Scottsbluff. So there is possibly a need in Scottsbluff that is nowhere else in the state, and therefore, there is a need for an accommodation in that circumstance, for their circumstances or for their situation. The amendment does two things: First, the amendment adds that three rehabilitation beds may be added if there is a need in that health planning region and there are no other comparable services available in that region. For some reason this is the term that's been used, and a health planning region was defined in 1997 and was established based on a Nebraska state health plan that was done in 1986 to 1991. There are currently 26 regions. The Panhandle actually has three regions, and the only entity or the only facility in Region 22 is the Scottsbluff region. If there are no comparable services in that region or any other region, then they have the opportunity, under the amendment, assuming they are exceeding an occupancy rate, for an additional three beds. Are there enough beds in those planning regions such as Scottsbluff? They should be treated differently. Same with Norfolk, Columbus, Hastings, Grand Island, Kearney, and Fremont. Each of these hospitals fall into a separate planning region. So you look at whether there is a need for more rehab beds, and you look at the capacity within that region, and in the event that it's at 80 percent for three quarters, it meets the first hurdle and it is eligible for those additional beds. The second part of the amendment...excuse me. The department then will look to see if there are other comparable services in the region. So you prove that there's a capacity need, then you determine if there's an occupancy requirement met, and then you look throughout the region to see if there are other services. If there are not, then they're eligible for those three beds. The second part of the amendment prohibits beds from being transferred from one hospital to another. Current law, any hospital can create a rehabilitation unit of ten beds, and the amendment would prevent a hospital from going around the certificate of need requirements by simply transferring the beds from one hospital to another. The rest of the bill remains the same. The benefit of this amendment is it allows for additional rehabilitation beds in greater Nebraska, if the need is demonstrated, and the process outlined in this amendment is more flexible for those unique characteristics that have been a part of this conversation that most recently came to light after the General File discussion. Senator Gay and others have worked very hard on this to try to find common ground, and I would yield whatever remaining time that I have to Senator Gay. [LB765]

SENATOR LANGEMEIER: Senator Gay, 5 minutes, 20 seconds. [LB765]

SENATOR GAY: Thank you, Mr. President. Thank you, Senator Erdman. As you had mentioned, we have spent time getting together with the interested parties, as we said,

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from General File to Select File. We've done that through several meetings, and I think this is a very reasonable amendment that will assure more for the outstate...I wouldn't say outstate, but if you're in an area in greater Nebraska, it allows some flexibility, and this amendment does that. Just a little bit I want to continue on with what Senator Erdman said about why this is needed, and also thank Senator Fulton for prioritizing this bill, and Senator Schimek has been a great help along the way on this, too. But the reason this is in place is because over the years we've had a policy that we thought was working very well. Senator Erdman pointed out as...on the handout, if you look at the handouts, it's not that we have...that people cannot grow or expand. This is just a cost constraint measure of how they expand. The federal government is changing the priorities and making it more difficult to be in rehab, and also I would say the long-term care and nursing home people have been involved in those discussions, too. I don't want to leave that out, because this bill also addresses long-term care beds. But as we look at these measures, if we have just unrestrained growth, we are liable--Medicaid, i.e., the state, as well--paying some of these costs. So this bill is needed to make sure we can somewhat control the growth. There's still plenty of opportunities, as Senator Erdman alluded to, that people can grow. So if you look at the Nebraska rehab beds alone, that seems to be the topic of the most interest here and where we've come across a little bit of disagreement. When you look at that you can see that there's been plenty of beds added, just in the one year. So this doesn't do away with that. If there's a need, you go through the process and then they either...they grant the beds, as needed. What we've done then on this amendment, back to that, is specifically go to the district regions, and that's the other handout we gave you, and you can see those regions are just what I say--there's a Panhandle region, there's two out there, the North Central. So we take the population, as we deliver any health service, and say, what is good for a metro region may not work in a rural region. So what we did here is, this is a good compromise, where they can feel they're going to have a good shot at saying, well, you're right. You've got different needs. Let's go give you...go through the certificate of need. They then would say, yep, you're right. You need some extra beds. We then expanded it from two to three, three beds, so that also was an agreement we made. So I think there's been a lot of work put into this, and the reason we're doing this today is for the future, to make sure the legislative intent years ago, which was good intention at that point, too, is addressed under this bill. One more thing: We did have another person who had a need and they said, well, this is going to affect me. After talking to them, they understood that this is not a big expansion to create more certificate of need. This is specifically to two things, and the intention is not to go expand the certificate of need into the future. And I know...because that is something we don't want to get into. That would be going backwards. But in these two cases, because of the number of beds we have and the specifics, years ago it was decided to keep this in place. That's what this does. This amendment is a good amendment, and I'd hope you'd support it. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. You have heard the opening on

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AM2526. The floor is now open for discussion. Senator Harms, you're recognized. [LB765]

SENATOR HARMS: Mr. President, colleagues, I rise in support of this. It does resolve an issue that we have at Regional West Medical Center at Scottsbluff. I thank Senator Gay for working through this particular issue for us, and the hospital there is satisfied with this amendment, and I would urge you to support it. It definitely addresses the issue that we had in our area. So thank you very much, Senator Gay. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Schimek, you are recognized. [LB765]

SENATOR SCHIMEK: Yes, thank you, Mr. President, members. I will only speak a brief minute or two here. I...first of all, I'm in favor of the amendment and thank the people who worked on it to bring different concerns into consideration. But I think we need to make clear here that we're not making changes to the rehab bed portion of the CON statutes. We are not attempting a complete rewrite of the certificate of need law at this time. We are not cleaning up sections of statute that ultimately should be cleaned up. We simply want to return the law to the pre-lawsuit status and adopt the Erdman amendment. Sometimes courts look at legislative language and make an interpretation that, because one section of a statute is one way and another section of a statute is another way, that the Legislature meant something by the fact that they were different. I think it needs to be made clear that we do not mean to imply any legislative intent by not cleaning up or reconciling the rehabilitation and long-term care bed portions of the certificate of need statutes. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Seeing no other lights on, Senator Erdman, you are recognized to close on AM2526. [LB765]

SENATOR ERDMAN: Thank you, Mr. President and members. Just a couple points of clarification. The terminology that's used or, as I explained it in the amendment, of other comparable services is similar to the language that we use on nursing homes. We have similar restrictions about transferring beds within an area or from one facility to another. And so it's ensuring that, as I understand this again, that we're using terms that compare what we use in other areas of law. The other thing that I need to point is the amendment before you is different than potentially some of you have received e-mails about. There were two ideas that may have been utilized to address this concern about rural facilities having access to expansion of rehabilitation beds. One was a hundred-mile distance or radius from one facility to another. The other one was using the health planning regions that are in this amendment. So there is no reference to a specific distance at all in any of these amendments or in the underlying bill. We're using the health planning districts, which have been distributed to you, in which Scottsbluff, Kearney, Hastings, Grand Island, Norfolk, Lincoln, and Omaha are all in their own

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district. So the issue of referrals and things from one area to another, or how that impacts the ability for one facility to grow, you would have the ability to grow based on these guidelines, not based on what everybody else is doing. Because essentially, if you had the need and met the 90 or 80 percent occupancy rate, you could expand those three beds without going through the certificate of need. If you needed more than the three beds, you can still go through the certificate of need. It doesn't prohibit you from doing that. This is a technical amendment that clarifies the intricacies of this law, provides flexibility for those areas in rural Nebraska that do have a need. And I would encourage your adoption of AM2526. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Erdman. You have heard the closing on AM2526. The question before the body is, shall AM2526 be adopted to LB765? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB765]

CLERK: 27 ayes, 1 nay, Mr. President, on the adoption of Senator Erdman's amendment. [LB765]

SENATOR LANGEMEIER: AM2526 is adopted. Mr. Clerk. [LB765]

CLERK: Mr. President, Senator Hudkins would move to indefinitely postpone LB765. Senator Gay, as primary introducer, you have the option to take it up or lay it over at this time. [LB765]

SENATOR GAY: Now. [LB765]

SENATOR LANGEMEIER: You wish to take it up? [LB765]

SENATOR GAY: Take it up, yeah. [LB765]

SENATOR LANGEMEIER: Thank you. Senator Hudkins, you are recognized to open on your motion to indefinitely postpone. [LB765]

SENATOR HUDKINS: Thank you, Mr. President and members. I have filed this motion because there is currently litigation being pursued in the Supreme Court that the plaintiff, Madonna, is unwilling to dismiss and allow for a legislative response to the issues presented under this bill. This litigation will resolve the question that LB765 presents to the body. It's my opinion that so long as the litigation is in place, we should not interfere with that process. The Supreme Court may well answer the question consistent with the provisions of LB765, thus making the bill unnecessary. On the other hand, should the Supreme Court rule consistently with past interpretations of the legislation, then the Legislature can take action next year if they believe the Supreme Court got the decision wrong. But for us to act at this time, after the defendant in the case has had to expend hard-earned dollars on litigation costs because the plaintiff is

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unwilling to compromise or to dismiss the action and allow for the matter to be resolved here in this body, is wrong. Therefore, I would ask the body to IPP the bill, leave the parties to their court action and then, once that is finalized, we can take action, if it is necessary. Thank you. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the opening on the motion to indefinitely postpone. Senator Gay, you are recognized. [LB765]

SENATOR GAY: I would urge you to oppose this, obviously. The reason why, it's exactly why we need to address this. There has been, time after time...this would open up the floodgates. That's why we are doing this. For 20 years, the law had been in order and worked very well, as you can see by the handouts, that people can grow. We've then said, okay, there's some concerns, let's revisit the issue, which we did. If we always did that maybe we could get nothing done here, because there's certain things, that's what we do, is clarify. This is one of these issues not everyone is going to be happy. We've gone above, what I would say, above and beyond, but we've done what we needed to do, and we've addressed concerns that needed to be addressed. There is a certain thing here by the amendment you just passed, would clarify a lot of these regions for that. That's why we did it, so you won't have lawsuits going back and forth between regions and some of these things. This is a growth mode, how we're going to do it. And that's why this bill was even introduced, was for some of those reasons, so we don't have continual problems along the way. I'm not in that battle. I was approached in the summer to look at a situation. I did as a member of the Health Committee. This has been through the full Health Committee, and we've heard some of these concerns and they were taken into consideration, and we all thought, passed unanimously out of committee. You've heard Senator Johnson speak on it many times earlier on General File. So this, I understand what the senator wants to get done here. I obviously disagree and I hope you would take that to heart too. Because, like I say, we've already dealt with some issues here where, same thing, and we still decide we move on, because we are the body that sets the policies of the state, and I don't think this should weigh into it. As Senator Schimek talked about earlier, this is a clarification of existing law and policies we've had in place for 20 years. And now we've also fixed that and improved that situation. So this bill will get that done and avoid future conflicts that could occur down the road, and that's what this is really here to even...that's why the bill is what it is on acute care and long-term care beds. So I would encourage you to not support this amendment. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. (Visitors introduced.) Returning to floor discussion on the motion to indefinitely postpone LB765, those wishing to speak, we have Senator Flood, Fulton, Lathrop, and Wallman. Senator Flood, you're recognized. [LB765]

SPEAKER FLOOD: Thank you, Mr. President and members. I support this motion to

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indefinitely postpone LB765. I also want to say I appreciate the fact that Senator Gay did make a good-faith effort, I think, to try and find some common ground, as did Senator Erdman. And although I was the only no vote on the prior amendment, I recognize that some work has gone into this. We have six beds right now for our acute rehab up in Norfolk. We don't want to come begging back to somebody to grow one to three beds every two years. We want to grow and expand as we have the needs. You know those little two-lane roads in and out of my town? We can't get ourselves down to Lincoln very quick, and I don't want to sit around here and beg people to expand so that people that need acute rehab can get it at home instead of running down to wherever, whoever has got the bigger bed count. I want it to be, you can get...you can expand as long as it's within 10 percent of your total bed count. And I don't think we should be passing this bill and I'm going to vote against the bill, if it comes up, and I'm voting to kill it. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Fulton, you are recognized. [LB765]

SENATOR FULTON: Thank you, Mr. President. I rise in opposition to this motion. I do not believe we should indefinitely postpone this bill. I think it's a good bill. I prioritized it. I looked into the bill, the reasons for bringing it. I thank Senator Gay for bringing the bill. If the question here is whether or not it's appropriate to take this up because it is under the auspices of the judiciary at this point, I would like to point out what Senator Flood said. He would like to see this...he would like to see the policy of our state be to utilize the total number of beds. And so with respect to Senator Flood, he's making a decision which he believes would be better policy. That's what we do in the Legislature. The main reason for bringing this IPP motion up is because somebody else is deciding whether or not it's appropriate with respect to laws that have been passed. We in the Legislature set the policy for the state, and with respect to the Speaker, I guess I disagree. I think that the certificate of need, as it was passed in the late nineties, recognized the importance of--at least within that debate--recognized the importance of having a legitimate control over how certain areas of healthcare proliferate. In this case, we're talking about rehabilitative care. And so the intent behind the bill is good. The bill itself is good. I think the bill is good policy, as amended. We take into account other areas of the state. It improves upon the bill. And so I ask you to oppose this IPP motion and move LB765 forward. In the way that we moved it from General to Select, I'd like to see us move it from Select to Final Reading. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Lathrop, you're recognized. [LB765]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I am standing in opposition to the motion to IPP. And I want to take a moment to recognize the work of Senator Gay. I've worked with him on a number of bills and I've also worked with him a

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little bit on this one, and I appreciate that he's willing to work with the parties and try to bring about solutions to the problems that come before the committee he serves on. I think he's done that with this bill. And I also think the policy is good too. The underlying policy is good. It would be nice if every community could have their own rehab department, but, in effect, what happens is, if we try to have too many rehab beds across the state, then we're going to lose the higher standard of care provided at those places that specialize in this type of care. And certainly the state of Nebraska, I work with people that go through rehab all the time, familiar with the rehab hospitals in Nebraska, visit them from time to time, and people that go through there, and we really, truly have fine, fine hospitals. Between Chicago and Denver, we have a couple of the best right here in Nebraska, and I'd certainly hate to see...one of the reasons that we're able to do that is that we can have speciality hospitals. And by having those speciality hospitals, we bring in some of the best physiatrists, doctors of physical and rehabilitation medicine, in the country, right here into Nebraska, to work in these specialty hospitals. And if we start diluting their patient count and allowing everybody to open up their own department like it's a maternity ward, we're not going to have that quality of care in these specialty centers. So again, I'd support LB765. Thank you.
[LB765]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Wallman, you are recognized, followed by Senator Aguilar. [LB765]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I, too, support LB765, and I realize, I've been in rehab hospitals, and you can have too many, and empty beds cost a lot of money, and we're dealing with nonprofits here. And is this a competition between hospitals? Then we have to watch out what we do because we do fund this with Medicaid and Medicare dollars. So we want to have the best we can have. And we're going to have a few empty beds, but we cannot afford to have a whole lot of empty beds just so one hospital has 50 and one has 80, so we have to be careful here. And I do support and I thank Senator Gay for bringing this forth, and Senator Fulton for working on this. And I know it's tough to get people to work together, and you're not going to be fair to everybody, but I think this is a good amendment. Thank you, Senator Gay. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Aguilar, you're recognized. [LB765]

SENATOR AGUILAR: Mr. President and members, I rise in support of the IPP motion, as well. I voted for the amendment because I thought it would make it a little bit better, and it may pass in spite of the motion. But, quite frankly, I really do appreciate the work Senator Gay, Senator Erdman has put forth in trying to make this better, but, bottom line, it just...it doesn't get there yet. And if it was such great public policy, I don't think you would have hospitals in Grand Island, Kearney, Hastings, Norfolk, Fremont arguing

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against the bill, saying it's bad legislation. So evidently it's not where it needs to be yet, and for that reason I do support the IPP motion. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Senator Johnson, you are recognized, followed by Senator Gay...Senator Harms, excuse me. [LB765]

SENATOR JOHNSON: Thank you, Mr. President. I rise to oppose the indefinite postponement. Senator Gay has worked very diligently to get all sides together, and the various hospitals have been heard from around the state. The argument that was presented to kill this bill was that we should wait for the courts to decide. I thought that this Legislative Chamber was the policymaking area of this state, not the courts. We make the policy, not the courts. Now, what we're really talking about here is this: We are trying to preserve the top quality, the upper echelon of a couple of facilities in this state. We're not trying to level the playing field by taking the best institutions that we have and cutting them down to size. That's what will happen if we take these institutions that have to be of a certain size, have a certain number of patients to be able to afford the staff that the number of patients would generate. This is what we're trying to do with this. You might recall, when we talked about this before, that it takes approximately 40 beds to have enough capital to hire the staff for these extraordinary patients. We're not talking about the patient that has his hip or knee done, or something like that, and then has rehab. That's what we can do in Kearney, Scottsbluff, Norfolk, etcetera. But I can tell you this: When we have these very serious patients, they go to Madonna, they go to Omaha, they go to Denver, to these extraordinary places. This is what we're trying to do, is preserve these extraordinary places. If we make it impossible for them to stay in business and pay their bills by having too many of the top-notch facilities, then we all will suffer. If there is a small problem left with the states in the nonmetro area...in the hospitals, rehab centers in the nonmetro areas, we can fix that. I doubt that it is true. Senator Gay and his staff have worked very diligently in attempting to come up with their reasonable way of this. So let's, when we have excellent facilities in this state, let's keep them excellent. I would recommend that we do away with the indefinite postponement status, and advance this bill. Thank you. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Johnson. (Visitors introduced.) Returning to discussion, we have Senator Harms, Fulton, Stuthman, and Gay. Senator Harms, you're recognized. [LB765]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in opposition of the IPP here and in support of LB765. You just take a look at the math that they gave you, and take a look at where Regional West is located here, folks. It's pretty important for us to have the flexibility to do this, to have the opportunity. It is a quality hospital. It serves people from all over that particular region. There is no one close to us. And at least this bill gives us the guidelines, gives us the opportunity to grow, and gives us the flexibility to do it, and we deserve to have that portion of it in rural America. And I would urge you

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to vote against IPP and vote in favor of this bill, because it helps us. It's the right thing to do here. By stalling this off and putting it off, doesn't help us at all. At least with this bill, as I said, we have a process to use. We have the criteria to determine what's going to take place. So I would urge you to do this and move this bill forward and vote against this IPP. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Fulton, you are recognized. [LB765]

SENATOR FULTON: Thank you, Mr. President. Again, I do not believe we should IPP this bill, and I want to share with you a little bit of how...just break it down to you. If I were sitting here talking to you, person to person, this is how I would explain this bill. When I first looked into this, my thought was, well, hey, we should open this up and make this a--I'm a free marketeer--we should make this a free market issue. If someone wants to open up rehab beds, let them open rehab beds. We can't tell them not to do that. What I quickly have learned, though, is that healthcare is not a free market enterprise. That's not the way that it's gone forward in our country. And in Nebraska we made the decision some years ago to have the certificate of need in place as our policy, the idea being that we could have very specialized care that is high quality. Imagine, if you will, you have 100 clients and you have two facilities to serve those 100 clients or 100 patients, and those facilities have grown and they've done very well and over the years you have two very high-quality facilities to serve those 100 people. And then, all of sudden, we decide to open it up and have five facilities to serve those 100 people. Do you think the care is going to become more specialized? Will the care quality increase? Perhaps the pricing will go down, but will the quality of care increase? In medicine that's not the case. And so here I am, a person who comes at this with a free market philosophy, but that doesn't fit onto our policy with regard to healthcare. So if we were to allow beds to be opened up simply because one wants to open up a bed, we would simply be going backward on what the policy has been in Nebraska, and that is to have a reasonable and rational basis by which we expand rehab beds. We don't want the quality of care to go down. Certainly we want to get at prices, and there are ways that we can do that, but this isn't completely a free market concept. So when you open this up to a number of entities that want to add beds, you decrease the quality of care. And that's ultimately why I decided to prioritize this bill. I will go ahead and stop now. I think Senator Gay is going to be up a little bit later. But bear that in mind, this isn't simply as easy as saying, well, we should let anyone who wants to open rehab beds open them. It doesn't work that way. That's going to decrease the quality of care. There has to be a high level of quantity and repetitiveness in order to make good quality care, and we want to maintain good, quality rehabilitative care in the state of Nebraska. So I oppose the IPP motion and I hope that we can move LB765 forward. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Gay, you are

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recognized. [LB765]

SENATOR GAY: Thank you, Mr. President. Senator Fulton made the point, and I agree, I would hardly consider him or myself anti-markets or anti-free market, or some of the other people that have been very involved in this process. Senator Flood has made a statement, and I agree: If Norfolk wants to put beds there, they should be able to put beds there. Well, that's exactly why we need this, is because, as Senator Fulton alluded to, healthcare is a different animal here. There are a lot of things in place. We go by Medicaid rules, Medicare rules, all these rules that are in force. We're currently working on the prescription drug list, and there are a lot of different rules we have to follow. So what we're trying to do is come to a compromise that allows everybody to have an opportunity. And I would, on the other hand, I would say this creates some safety for those people that are already in a region, if you have it, to prevent someone just from parking in your region and now being your competitor and watering down your great facility you have. So we take this very seriously, and we...I would like to encourage you to definitely vote against this motion to indefinitely postpone. Thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Gay. Seeing no other lights on, Senator Hudkins, you are recognized to close on your motion to indefinitely postpone. [LB765]

SENATOR HUDKINS: Thank you, Mr. President and members of the body. I do appreciate Senator Gay's working on this issue. I think that this is an issue of access. BryanLGH is a fine hospital and they have a great rehab center and they do some of this acute rehab that we've been talking about. Madonna is also a fine rehabilitation center. I'm not arguing that. The problem is that Bryan reasonably expected, from a prior court interpretation, that they could use all of the beds in calculating the number of rehab beds. That's what the court said. Bryan has established these beds as of March 1, and intend to have them staffed and available by the 1st of July. Now, because of an appeal from that original court decision, Bryan finds itself in limbo. Senator Johnson said that people could get rehab in Kearney or Scottsbluff of Norfolk--well, that's fine--and that we should reserve additional rehab beds for the extraordinary cases. Well, who is to decide how many beds it too many? What if it were your family member and your local facility was full? We all received a letter from the Norfolk hospital saying that they need 10-12 additional beds right now. I see this bill as a turf battle between two entities in Lincoln. The courts have ruled one way, and that decision went against one of the parties. Was that...Senator Fulton, was that decision unreasonable or unrational? I don't think so. The certificate of need is what we live under now. When Bryan put in their first 10 rehab beds, why weren't there complaints at that time? Madonna never raised a fuss. And now all of sudden they don't want any more: I have my place in the country and I don't want anybody else out here. You can't open these types of beds overnight. And I really have trouble thinking that 10 additional beds in one facility is going to decrease the standard of care for rehab patients. I would ask you to

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indefinitely postpone this until after the court decision has come down. Then if you don't like it, Senator Gay, you can come back and reintroduce this bill next year. And if the decision goes against you, I guess you can do the same thing. So thank you, Mr. President. [LB765]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have heard the closing on the motion to indefinitely postpone. The question before the body is, shall LB765 be indefinitely postponed? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB765]

CLERK: 4 ayes, 26 nays, Mr. President, on the motion to indefinitely postpone. [LB765]

SENATOR LANGEMEIER: The motion to indefinitely postpone fails. [LB765]

CLERK: I have nothing further on the bill, Mr. President. [LB765]

SENATOR LANGEMEIER: Senator Aguilar, you requested a board vote on LB765? You waive that. Senator McGill for a motion. [LB765]

SENATOR MCGILL: Mr. President, I move LB765 to E&R for engrossing. [LB765]

SENATOR LANGEMEIER: All in favor of LB765 advancing, say aye. All those opposed say nay. LB765 does advance. Mr. Clerk, items for the record. [LB765]

CLERK: Yes, Mr. President, I do. Thank you. Retirement Systems reports LB365 to General File. Amendments to be printed: Senator Stuthman to LB1174, a series of amendments; Senator Kopplin, LB986. Bills read on Final Reading this morning were presented to the Governor at 12:32 p.m. (Re LB959, LB960, LB961, LB1019.) Study resolutions: LR314, LR315, LR316 by Senator Erdman; LR317, LR318 by Senator Kopplin; LR319 by Senator Hudkins, all study resolutions, Mr. President, to be referred to the Executive Board. (Legislative Journal pages 1174-1177.) [LB365 LB1174 LB986 LB959 LB960 LB961 LB1019 LR314 LR315 LR316 LR317 LR318 LR319]

And, Mr. President, I have a priority motion. Senator Fulton would move to adjourn until Monday morning, March 31, at 9:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn until Monday morning, March 31, at 9:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We are adjourned.