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Floor Debate  
April 01, 2008

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[LB245A LB245 LB365 LB736A LB736 LB754 LB813 LB814 LB830A LB846 LB846A  
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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for this, the fifty-first day of the One Hundredth Legislature, Second Session. Our chaplain for today is Father Lloyd Gnirk of St. Pius X Church, Omaha, Nebraska, Senator White's district. Would you please rise.

FATHER GNIRK: (Prayer offered.)

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

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

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

ASSISTANT CLERK: No corrections this morning.

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

ASSISTANT CLERK: Mr. President, there are no messages, reports, or announcements.

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll proceed to the first item on the agenda, General File, LB1154A. [LB1154A]

ASSISTANT CLERK: Mr. President, LB1154A was introduced by Senator Raikes. (Read title.) [LB1154A]

SENATOR LANGEMEIER: Senator Raikes, you are recognized to open on LB1154A. [LB1154A]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. LB1154A is the A bill that we're trying to get caught up with LB1154. LB1154 again, let me remind you, deals with the learning community, several provisions, several modifications of

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statute involving the learning community. LB1154A involves an appropriation of about \$7,600 I believe, and that appropriation is to cover the cost of using the Secretary of State's Office rather than the Commissioner of Education to facilitate the initial meetings of the learning community council. Just very quickly, the Secretary of State has been experienced because they've done this sort of thing before, did an excellent job. The committee thought it would be a good idea to make sure that they are, again, given the opportunity to perform this service, and \$7,600 or thereabouts is the cost of it. So I urge your support of this A bill. Thank you. [LB1154A LB1154]

SENATOR LANGEMEIER: Thank you, Senator Raikes. The floor is now open for discussion. Is there anyone wishing to speak to LB1154A? Seeing no lights on, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is, shall LB1154A advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1154A]

ASSISTANT CLERK: 26 ayes, 1 nay on the advancement of the bill, Mr. President. [LB1154A]

SENATOR LANGEMEIER: LB1154A does advance. Mr. Clerk, LB1174. [LB1154A LB1174]

ASSISTANT CLERK: Mr. President, LB1174 was introduced by Senator Dierks. (Read title.) The bill was read for the first time on January 23 this year, referred to the Committee on Agriculture. That committee referred the bill to General File with committee amendments. Those amendments are now pending. (AM2319, Legislative Journal page 960.) [LB1174]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Dierks, we left this at adjournment last night. Would you give us a brief reintroduction of LB1174. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. We started last night about 6:00 on my priority bill, which is LB1174. The bill was structured to put into statute the same specifications that had been in our constitution providing for protection from corporate investment in agriculture in Nebraska. Initiative 300, as you know, was struck down by the courts a year ago last summer. And they found that there was a violation of Interstate Commerce Clause and a violation of the Americans with Disabilities Act. The language in the bill we have brought now for the Legislature to consider, which would actually put it in statute instead of in the constitution, provides the corrected version of what the courts had asked for. We take care of the Americans with Disabilities Act. We take care of the Commerce Clause. We even have provided in this piece of legislation the ability for five or more unrelated citizens to take part in an entity in Nebraska, agricultural entity in Nebraska. One of those or two of them or maybe four of them could actually be from another state. We think we've opened it up considerably to allow for

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small co-ops and LLCs to take part in the process. We had a great discussion last night. I think that probably most of us heard as much as we wanted to and maybe some of us heard more than we wanted to. But it's...we were preparing for a bracket motion this morning, but Senator Wightman has told me that he will not introduce the bracket motion and I thank him for that. That gives us the opportunity to go ahead and strike out on the amendment itself, which has become the bill, and talk about those things we need to talk about to get this bill advanced. I think that covers pretty well what we did yesterday, and I stand ready to answer any questions that people might have. Thank you, Mr. President. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Dierks. You have heard the brief reintroduction opening of LB1174. The floor is now open for discussion on the committee amendments. Those wishing to speak we have Senator White, Senator Dierks, Erdman, and Kruse. Senator White, you are recognized. [LB1174]

SENATOR WHITE: Thank you, Mr. President. I rise in support of this bill and in support of the general concept behind it. And I do so for a large number of reasons, each is different as the different aims that this bill advances. Let's start with the land itself and go forward from there. One of the things that has been clear in terms of environmental quality is that if people own the land personally and they have the opportunity to pass it down through families they are better stewards. The actual productivity, the fertility of the land, the fact that it's not poisoned is safest when it is in the hands of the people who actually live on it. When we get divorced of ownership and stewardship of the land from people who live on it to corporations, the land stops becoming a living thing that we are entrusted in my religion, and I think in most religions of the folks that are here, we're entrusted as stewards of the land. It becomes not something that we are obligated to be a steward of. It becomes an asset to be exploited, exhausted, used, and if convenient, discarded. That type of use of the land is not only shortsighted, it is also immoral. And yet we have seen that over and over again in corporate farming. So in terms of if you are concerned about the long-term environment, local ownership, controlled ownership of people who are dedicated to and living on the land is by far and away your best long-term guarantee that it be protected. Second, let's talk about the consumers of the produce. The United States is on the verge of becoming a net food importer. The great breadbasket of the world may become a net food importer. And the consequences of that are going to be devastating for our health long term. We have all read over and over again about various scares of commodities that we've eaten, whether it's E. coli on spinach or strawberries, whether it is pesticide residue, whether it is processed foods coming out of China and other Third World countries that are imported into our country, serious health impacts, literally thousands of Americans have been poisoned by it. The globalization of agriculture has long-term adverse consequences for our consumers here at home. We no longer can trust what's in our food. We can no longer verify where it came from. We can no longer verify how it was raised or how it was processed. NAFTA has much to do with the globalization of agriculture. It has not only been unfair

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and devastating to consumers here, it has absolutely destroyed the economies of many Third World countries. Many of us here today have a real serious concern about illegal immigration. And yet corporate ownership of farmland here and the corporate ownership of other farmland in the Third World as well as corporate policies towards the globalization of agriculture have absolutely caused the deluge of illegal immigration that we face in the United States. You cannot divorce the fact that we have large numbers of displaced people in the United States looking for work from the fact that mega corporations--ADM, ConAgra, Cargill, and others--have purchased huge amounts of land in South America and have also flooded those areas with high imports, thus driving subsistence and small farmers off the land. We now find, in fact, more are being driven up here because the price of "commoditized" corn... [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR WHITE: ...and others have risen so much. If we want to take control of our food supply, which is really truly taking control of our life, we have to tie ownership of the land back to the communities that live here. And if you live in a small town or you support small towns, if corporations start owning the land, you will see an acceleration in the decline of your populations. That has been one of the real hallmarks of corporate ownership of land. For these reasons and many others, I support this bill. I've also worked in this area as a lawyer and would be happy to answer any questions to the extent I can. Thank you, Mr. President. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Dierks, you're recognized. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. First of all, I want to tell you I made a mistake I guess when I was talking to you earlier. I indicated that there were provisions in the legislation that provides for five or more people to join in an LLC. It's actually five or less. I think that better be clear on the record. Talked a little bit last night about some things that are happening at the national level. And I know that some people were concerned that this doesn't have anything to do with what we're talking about in Nebraska, but I think that it does. I think that with the advent of corporate America and their combining and their merging is going to have a tremendous effect on Nebraska. The packing industry, the banking industry, the oil industry, and the insurance industry, we're all going to be part of a conglomerate of corporations that are going to be running our lives. And I think that we need to keep in mind when we're talking about limiting corporate ownership of our farms and ranches that this is just one small step that we can take to protect ourselves from this corporatization that's happening across the country. I should tell you that in 1998 the price of hogs got down under \$8 a hundred, and people were going broke by the dozens. They couldn't even afford to haul the hog to town because the gas cost more than you got for the hog. And a group of us from around this northern part of the nation had a hearing, an open session for people to

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come and talk to us. Farmers came in to Sioux Falls. Senator Kloucek from South Dakota; Senator Kibbie from Iowa; a House member from Minnesota; a Senator from Missouri and myself sponsored a meeting at the Sioux Falls stockyards. And we invited farmers to come in and tell us on an open mike what some of their problems were. We had 500 people show up at that meeting. It lasted all day. It lasted into the night. We didn't shut anybody off. We just let them talk, and they had lots that they wanted to talk about. That was in 1998. In 1999, actually in December of '98, I had gone to D.C. as the vice chair of the ag committee for NCSL to carry some resolutions back there we thought might be helpful to the nation's cattle producers. And you know how that works--if you get them passed through that committee then the staff of NCSL takes those resolutions to Congress to try to get them passed there. One of the reasons that it's important, and I should make this statement on the floor, I believe, is those senators who are term limited out still have an obligation to go to those meetings and not be chastised for that because they have an important job to do when they get there to take resolutions that could be helpful to our state. So I think it's correct for them to be able to do that, and I got...I wasn't really misquoted. I just told them the rest of the story, but the rest of the story didn't get printed in the paper a couple of weeks ago as part of my story. When I was at that meeting, we had some people from the Department of Justice come over. [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR DIERKS: Beg your pardon? One minute. Okay. There were two young lawyers from the Department of Justice. My question to them was, where do you draw the line on a monopoly? I said, I want to know is it 51 percent, is that what constitutes a monopoly? And they looked at me like we don't use figures. We don't think of them as how much of a company you have to own or a product that you have to own to call it a monopoly. We look at a monopoly when it has a deleterious effect on the consumer. So I said, you don't really have much in the way of guidelines. He said, well, yeah, we just kind of shop around the marketplace and see where there's a problem. You know, I had a bunch of constituents who thought that IBP had a monopoly with 30 percent of the packing industry in Nebraska and they did. So I wonder where the protection is from the Sherman Antitrust Act, the Packers and Stockyards Act, and it bothers me a great deal. I think I'll close with that. [LB1174]

SENATOR LANGEMEIER: Time. [LB1174]

SENATOR DIERKS: Thank you, Mr. President. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Dierks. (Visitors introduced.) Returning to discussion on the committee amendment, AM2319, offered to LB1174. Those wishing to speak: we have Senator Erdman, Kruse, Stuthman, Wightman, Raikes, Hansen, Nantkes, Burling, and others. Senator Erdman, you're recognized. [LB1174]

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SENATOR ERDMAN: Mr. President, members of the Legislature, I'm going to continue to try to discuss the amendment before us. And it's going to continue to be difficult for me to do that depending upon the other comments that are made on the floor of the Legislature. This bill has nothing to do with NAFTA. I mean I'm going to go through the bill, and I'm going to try to do so in a succinct and logical process as to what this bill actually does. And in doing so, I think it will provide additional clarity to members of the Legislature about what the solution possibly is if LB1174, with the committee amendment, becomes law. Under LB1174 and the committee amendment, a family farm corporation, and these are corporations, we have corporations farming in Nebraska. We always have. Some of them are family farm corporations. They are corporations. Corporations are the business structure on which they operate. You can't simply say that all corporations are bad because if you're going to say that, then candidly you're saying that family farm corporations are bad. Let's get to an understanding of the terminology here instead of the rhetoric. And the reality is, is that under this bill a family farm, which is organized as a corporation in North Carolina is an absentee landowner in Nebraska, but is a corporation in Nebraska. They are an absentee landowner under this bill, and the reason is, is because that's what the court has told us we have to do if we're going to provide a remedy to their opinion on Initiative 300. And so we can make all the wonderful speeches that we want to about how owner-operators on the farm are better for the farm and they are, but the legal restrictions on the state have been significantly impaired by the court, such to the point that in order for us to pass a reversion of Initiative 300 we have to allow absentee landowners to have the same rights that Nebraska landowners have. Now you say, well, that doesn't make any sense. Guess what? That's the direction that the federal constitution, the federal courts have given us under the federal constitution in this area of law. Are those that live and operate on the land better stewards? I can tell you this, as one of those individuals that has a family that's doing that, you're darned right we're better stewards because it's our land. We're interested. But recognize that that's not what you're doing in this bill. Those North Carolina family farms, Hawaiian family farms, whatever it is, are protected as a corporation under this bill. They're absentee landowners shielded from liability in Nebraska if they're incorporated as a family farm and would qualify under the laws therein. Doesn't that have a negative impact on our communities if that's the theory that we're trying to advance here? Here's the other thing that's missing from this conversation. Initiative 300 was passed in 1982. As I mentioned last night, I was five years old. I didn't get to vote. I get to vote today. There's a lot of people in Nebraska that have an opinion on whether they voted the right way then. And we can't simply assume that what happened in 1982 is the solution for 2008 and going forward. But here's what else has happened in addition to Initiative 300 since 1982. We now have a heightened sense and interest in the regulation of livestock operations. That wasn't in place in 1982. Confined animal feeding operations, both regulated at the state and at the federal level, either under the Livestock Management or under the Confined Animal Feeding Operation Acts, are now a part of daily life. And regardless of whether

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or not you're owned by a family or whether you're owned by a corporation or whether you're in Nebraska or whether you're in Kansas, guess what? [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR ERDMAN: The federal government has told us that those confined animal feeding operation standards are the same. Those were absent in 1982. Here's the other thing that was missing in 1982--zoning. We now have zoning in all but five counties in the state of Nebraska. Start going through the logic of what we're doing here. We're not doing more and we're not doing a lot of the things that some members are going to tell you we're doing. And the reason we're not doing more is because it's already addressed elsewhere. The question is, is this necessary today going forward? And there is a healthy debate in the ag community and in this Legislature about whether it's necessary. Senator Stuthman pointed out yesterday and so did I that a majority, and I said according to the USDA 98 percent... [LB1174]

SENATOR LANGEMEIER: Time. [LB1174]

SENATOR ERDMAN: ...of all operations are owned by owner-operators. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Kruse, you're recognized. [LB1174]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the bill. I was bemused last night as I heard various persons talk about senators or farmers that disliked the bill. As I was reading my mail from today, every farmer that had written me supports the bill. In fact, to date I have not received a single message, e-mail from a farmer who opposes the bill. Family farm corporations, and Senator Erdman is correct--we're talking about corporations on both sides--family farm corporations have a tough go unless they're big. The big ones can fend for themselves. Big time is crowding out small time. And, you know, you can say, well, get over it. That's the way it goes. But it's a personal thing to me and it's a passionate thing to me. That's why I'm not farming. I didn't have I-300. Owners who do not operate the land were not acceptable to my dad. He asked me, are you going to operate the farm when it was time for him to retire? My answer was, no. Will your children? No. Then you will not have the farm. That was a matter of fierce opinion, stronger than opinion, it was his stand. It was his principle that he would not accept an absentee farmer on his land. And as soon as he put it up for sale, why, persons began to come in to measure some of the buildings around and figure out how they could amortize them out as part of the purchase. You saw it going downhill right away by some of the persons that would be looking at it. It is terribly sad to hear support for absentee landlords. And I recognize that there's some need, but there's a flexibility within this bill I think. I had a neighbor in Norfolk who was a dentist. And he was so proud, he kept talking about this farm that he had, yammered on about it

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and it made me feel like the end of the world was coming. He wanted to put a center pivot out there. He did put a center pivot on grassland. There is not a place in hell low enough for a person who is going to deplete the soil and then walk away from it because he can make some money on the short haul. I am looking for persons who care about the land, who love the soil. Senator White has spoken eloquently to the whole thing. This is a matter of stewardship. This is a matter of caring. You can't replace soil. And I recognize that a family corporation may not be sensitive to this, but they're far more likely to be sensitive to it than somebody who's living out of state. I want us to send the message that we care about the soil, we care about the land, and we want persons who are right there living on it, loving the soil, caring about what can happen and looking toward the future, which will be enhanced if we have people who love the soil. Thank you. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Kruse. We have, Senator Stuthman, you're recognized, followed by Senator Wightman. [LB1174]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. One of the things that I have listened to this morning and it really did upset me and it was when Senator White was talking about corporate ownership of land are not good stewards of the land and they're poisoning the soil, poisoning the soil. And then we hear and we know that 98 percent of the land is owned by family corporations, family individual operations or family corporations. So 98 percent of the land would you say 50 percent of that land is owned by a family corporation and corporations are the ones that are poisoning the ground? That disturbs me. We, in my operation, we have absentee landowners. We farm their ground. Because they own the ground doesn't mean that ground is going to be poisoned. We take good care of our ground. If we take good care of our soil, the soil will take good care of the operator. That is one thing you must keep in mind. People do not abuse ground. They need to generate revenue from that ground. They do not abuse the ground. They do not just let it lay there and generate nothing from it. They do not go out there and put something on it that would poison the ground. That is something that really, really disturbs me. Another thing that I'm really concerned with is that are we trying to go back in time where everyone lives on 160 acres again, as Senator Kruse said, you know, the love of the land, the people that are out there, they love the land, they like the area, they like to have a few cows, a few pigs, a few chickens and stuff like that? Is that the environment that we have? Can we afford to do that? I am sure that in today's environment a person can't survive on 160 acres of ground. You cannot hardly survive on 500 acres of ground. We're not going to go back to that. Another thing that does concern me is that five or less individuals can form a cooperation, a corporation and have an entity. But all...everyone of those five have got to be engaged in an agricultural operation. That's not what's going to be happening in years to come. We've got the baby boomers that are retiring from farming at this time. They're going to be selling their operations. They're going to be selling their farms. The land is probably going to be acquired by another family. But the individual that retired

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and went to town, his heart is still in the land and in livestock. He might want to invest in a corporation that allows a young farmer to expand his operation, allows a young family the opportunity to get involved with something that is very near and dear to that young farmer's heart. He wants to stay on the ground. [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR STUTHMAN: He wants to make a go of it, but his parents are still farming. There are several members of the family. They want to expand. They do not have enough capital. But with what I had just stated, there is an individual that sold his ground, maybe got a million dollars for it or so, and he wants to invest some of that to help out the farmer. But that individual is not actively engaged in farming when he decides he wants to be a part of it. This limits that. This does not give that individual the opportunity to invest into an operation that will give some young farmer the opportunity to stay on the farm. If that child doesn't have an opportunity, he's going to leave. He's going to be coming to Omaha or Lincoln or leave the state. Then our rural population is going to dwindle more as it has in the past. There are very few counties that their population... [LB1174]

SENATOR LANGEMEIER: Time. [LB1174]

SENATOR STUTHMAN: ...is...thank you, Mr. President. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Those wishing to speak: we have Senators Wightman, Raikes, Hansen, Burling, Dierks, and others. Senator Wightman, you're recognized. [LB1174]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I rise one more time. This will be my last time that I intend to speak on this issue. But as I stated yesterday, I believe that this legislation, LB1174, is not good for agriculture. It is obvious protectionism. And I know Senator White has a completely different view than I do on that, I think a different view than many people involved in agriculture. He thinks NAFTA is harmful to the United States, is harmful to agriculture. I think we have built an agriculture that's based upon foreign markets to a great extent. I think that's going to be more true as time goes on. Global demand has reached an all-time high, I think, for agricultural products, whether it be corn. We have more problem in the beef market I think. But we have an economy that's based upon foreign trade and global demand. A lot of farmers in the past 27 years, 26 years since Initiative 300 was first passed have had to change their farming operations. Now some of those may have been...some of those problems may have been eliminated by court decisions regarding Initiative 300. But it has limited farmers and the ability to use certain business structures that everyone else in the country is entitled to use. Because of Initiative 300 they were not available to farmers in the state of Nebraska. I think that limits agriculture a great deal. The second

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reason, in addition to the fact that I don't think it's good for agriculture, is that I don't think that it's accomplished many of the purposes that it was set out to accomplish when it passed in 1982. And in saying that, we had a lot of debate yesterday. I know both Senator Hansen and Senator Raikes talked about this issue. It hasn't stopped Ted Turner from acquiring 400,000 acres, most of which, if not all of which, probably has been purchased since 1982. It hasn't stopped the Mormon Church because there's been an exemption for certain charitable nonprofit corporations from owning land. Between the two of them--if the figures I heard yesterday each of them own about 400,000 acres--that constitutes about 1.6 percent, according to my figures, of all of the land in the state of Nebraska, somewhat higher than that if we limit it to agricultural land. So it has not accomplished what it set out to do. I don't know that a corporation owning land or a limited liability company or limited liability partnership owning land is really any different from an individual owning land such as Senator Turner...or Senator Turner, I don't know whether I've (laugh), whether I've brought him down or raised him up, but at any rate, Ted Turner. I do not know that he is any better for agriculture, for example, than a corporation or some other structure that may be limited under LB1174. I don't think it stopped the decline in the rural population at all. Pick up your Blue Book sometime. It shows the listing of counties clear back to the 1890s and it's been a steady decline in most of the rural counties of Nebraska. Many of those counties have a third of the population they did... [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR WIGHTMAN: ...in the early 1900s. So...and I don't think that that decline has lessened any since passage of Initiative 300. So, number one, I don't think it's in the best interest of agriculture. Number two, I don't think that it's accomplished the very purposes of which the backers of Initiative 300 set out to accomplish. And to me LB1174 is trying to breathe life into something that was a failed policy. Thank you, Mr. President. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Raikes, you're recognized. [LB1174]

SENATOR RAIKES: Thank you, Mr. President and members of the Legislature. I appreciate Senator White's comments because I think he sort of focuses on the main issues. There are several issues and several things have been brought up. I will tell you that Senator White and I see this one almost exactly oppositely. But he does point out that there are two things that this bill regards as paramount. One, that you be an owner-operator and the second that you limit liability. You cannot do agriculture well unless you have owner-operators and those operators are exposed to personal liability. And my point is this. If those are such terrible things, not being an owner-operator and limiting liability, why in the world have we not prevented childcare centers from being other than owner-operated and limited liability? It makes no sense. Why do we allow

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physicians to organize themselves so that they limit liability or, I assume, most physicians are going to be owner-operators. You got me there. But the point is, these are not villainous characteristics. These are provisions we've allowed for business organization for a very good reason. And to say that they apply everywhere else except agriculture is something that just absolutely escapes me. I don't understand why that's a good idea. We're talking about conservation, and on that I will mention that a number of the government programs, and certainly in the past years, there's been a strong financial incentive for farmers to be involved in government programs financially, they have in recent years pretty much insisted upon conservation practice. And so that's applied no matter whether you're a corporation or an individual operator. But it is another way to approach the issue of soil and water conservation good stewardship of assets. I do not see that the idea that you have to be or that you're not an owner-operator that you limit liability implies that the resources, the assets will not be taken care of. A corporation then presumably, according to that, would let the building fall down if it were owned as a C corp and you didn't have all the equity holders present on site. Why would you offer tax incentives to any entity that was not organized either as a...both as an owner-operator and with limited liability? It just makes no sense. This is an aberration of sensible policy in my view. Senator White also talked about we are on the verge of becoming a net food importer. Well, I think you can argue that a number of ways. Obviously to me the first thing if you're worried about that, you would outlaw ethanol production because, in effect, with ethanol we have converted part of our farmland into producing fuel. And if you're worried about food production, well, you'd eliminate that. I'm certainly not advocating that, but it indicates to me that it doesn't make a lot of sense. Again, if you're worried about the efficiency of food...being a food importer, you would want the most efficient food production system possible. If you want the most efficient system, why would you limit the way those businesses can be organized? And this is what this bill would do. It would say you can't operate as a producer in agriculture unless you're organized a specific way. That doesn't make sense. The other thing I'll point out, one of the big advantages... [LB1174]

SENATOR LANGEMEIER: One minute. [LB1174]

SENATOR RAIKES: ...pointed out by several people is the acquisition to capital. Conservation of water and soil, good stewardship, requires capital investment. If you're really interested in promoting that in seeing that it happens, you would want access...you would want to provide access to capital for those who are doing the job. It would be exactly the opposite direction to go to say that you can't organize as a corporation. That is a way to get the capital to do the things you need to do to address the goals that some of the supporters of this bill think are most important. Again, it doesn't add up for me. I do not support LB1174. Thank you. [LB1174]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Those wishing to speak: We have Senator Hansen, Burling, Dierks, Erdman, and others. Senator Hansen, you're

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recognized. [LB1174]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. Senator White, could I ask you a couple of questions on the mike? [LB1174]

SENATOR LANGEMEIER: Senator White, would you yield? [LB1174]

SENATOR WHITE: Absolutely. [LB1174]

SENATOR HANSEN: Thank you, Senator White. Do you have the amendments in hand where you could look up Section 2(3) sub... [LB1174]

SENATOR WHITE: I do not. [LB1174]

SENATOR HANSEN: Okay. You're a handicap this morning. [LB1174]

SENATOR WHITE: Every morning, Senator. [LB1174]

SENATOR HANSEN: (Laugh) We're equal. [LB1174]

SENATOR WHITE: At section...subsection (3), is that what you... [LB1174]

SENATOR HANSEN: Section 2(3)(b). This is the... [LB1174]

SENATOR WHITE: Ownership, keeping, or feeding of animals for production of livestock or livestock products? [LB1174]

SENATOR HANSEN: That's correct, and that is a definition of farming or ranching. [LB1174]

SENATOR WHITE: Correct. [LB1174]

SENATOR HANSEN: If you would move to the next page, subsection (4)...Section 4(1) and that says, "No entity shall acquire or otherwise obtain an interest, whether legal, beneficial, or otherwise, in title to real estate used for farming or ranching in this state or engage in farming or ranching." [LB1174]

SENATOR WHITE: Right. [LB1174]

SENATOR HANSEN: Okay, you... [LB1174]

SENATOR WHITE: I see that. [LB1174]

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SENATOR HANSEN: ...follow both of those. Okay. I am one of those immoral corporations that you spoke of earlier. We've been a family corporation since early 1970s when my father decided that we needed to do some estate planning. We incorporated our ranch. We've been incorporated since the seventies. We bought land in the mid-eighties and that's the last time we bought land. We have not...as a corporation, we have not bought any more land because some of the limitations that we had in Initiative 300 we have not. But I would ask you that since you are a member of the bar that you would call Capitol Security because I need to turn myself in. I feed cattle at a corporation. [LB1174]

SENATOR WHITE: Yeah. [LB1174]

SENATOR HANSEN: I feed cattle in a feedlot; 2.7 million cattle are fed in this state. Of those 2.7 million cattle, I have about 200 head on feed in a commercial feedlot, which is a corporation. [LB1174]

SENATOR WHITE: Um-hum. [LB1174]

SENATOR HANSEN: I am feeding cattle illegally. Would you call Capitol Security? I need to turn myself in. [LB1174]

SENATOR WHITE: Well, a couple of points. First of all, I did not say family corporations are all immoral. Let's say what I said is that there has been a history, however, of globalization and international corporations, Senator, that flat out have poisoned whole ecosystems. As a matter of fact, some of the years that you've lost money on beef production is because companies like Burger King have vertically integrated, devastated the Amazon Rain Forest,... [LB1174]

SENATOR HANSEN: Senator White, can we get back to the... [LB1174]

SENATOR WHITE: ...fed beef, fed them things that are improper. [LB1174]

SENATOR HANSEN: But could we get back to the bill and my...I mean I'm ready to turn myself in because... [LB1174]

SENATOR WHITE: As long as we're correctly talking about the same corporations, I'm happy to, Senator. I mean I'm happy to talk about...my family farm is owned by a family farm corporation. They take wonderful care of the land. But what I was talking about was the globalization and internationalization of huge conglomerates owning our land, not companies like yours--never mentioned that, never thought about it, never meant to intend it. [LB1174]

SENATOR HANSEN: Okay. Senator Stuthman and I were confused then at the same

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time. [LB1174]

SENATOR WHITE: I know, and I went over to Senator Stuthman and talked to him right after he got off the mike and pointed that out. [LB1174]

SENATOR HANSEN: If we read the amendment, which is the bill... [LB1174]

SENATOR WHITE: Yes. [LB1174]

SENATOR HANSEN: And it gives the definition of farming and ranching and then you skip over to Section 4... [LB1174]

SENATOR WHITE: Because if... [LB1174]

SENATOR HANSEN: ...it says I cannot feed cattle in a corporation. I can't afford to have my own feedlot. So we use custom feedlots. Those custom feedlots are organized, their business structure, and they are definitely agriculture because they own cattle themselves too. Some of their investors own farm ground. [LB1174]

SENATOR WHITE: Yeah. [LB1174]

SENATOR HANSEN: They buy corn they put into that feedlot and they sell it to me. I'm illegal. Under this amendment, I am illegal. [LB1174]

SENATOR WHITE: I would not interpret the law to prohibit custom feeding. I would not. [LB1174]

SPEAKER FLOOD PRESIDING [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR WHITE: I would not. [LB1174]

SENATOR HANSEN: But it's fairly clear in here. [LB1174]

SENATOR WHITE: But I would say that if, for example, the feeder (inaudible) the feedlot was owned by a corporation as opposed to an individual, I mean not a family farm corporation but let's say, for example, one of the problems I've got is integration in the beef packing. Let's say, for example, Tyson wanted to own the lot and you got to have cattle fed there. Would I think that's illegal under this act? You bet. [LB1174]

SENATOR HANSEN: We've got...yeah, but let's stay with the bill, though, and the corporation that I feed cattle with according to this legislation is so prohibitive that I can't

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do it. Legally if I was taken to court, I can't do it. Mr. President, I admit I am an April fool. [LB1174]

SPEAKER FLOOD: Thank you, Senator Hansen. We continue with discussion on AM2319. Senator Burling, you are recognized. [LB1174]

SENATOR BURLING: Thank you, Mr. Speaker, members of the body. I just wanted to reiterate something I said last night. If I-300 was successful in doing what the supporters said it would do, then why wouldn't the state of Nebraska be different than the other ag states in this nation that never had anything like I-300 to deal with? It looks like if it was so wonderful for production agriculture other states in the nation would come to us and say, what have you done? We need to do what you're doing. That hasn't happened to my knowledge. Nebraska agriculture looks very similar to other agricultural states in the nation that have never had an I-300 system. And so that's why I say there's really no need for this bill. I really appreciate what Senator Raikes said. I second those comments, and I would like to give the rest of my time to Senator Erdman. [LB1174]

SPEAKER FLOOD: Senator Erdman, Senator Burling yields you 3 minutes and 56 seconds. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President. Thank you, Senator Burling. Let me (laugh), if it's possible, let's talk about the mechanics of this law. Tyson owning cattle in Nebraska is not prohibited under Initiative 300. It's prohibited under LB835 that was passed by the Legislature in 2000. It's prohibited now. If you don't pass LB1174, packers that own livestock, excuse me, packers that process more than 150,000 head of livestock in Nebraska cannot own or control cattle, period. That is not in LB1174. That is not in I-300. Understand the law. Tyson owning cattle is prohibited today in Nebraska because of LB835 that was passed by the Legislature in 2000 because they slaughter more than 150,000 head of cattle annually in Nebraska. That is completely different than what we're talking about here. If this passes, is it a second check, if you will, to ensure that other corporations or entities don't own livestock or don't have an interest in production agriculture? Yes. But again, the examples given, we are not giving international businesses the opportunities to incorporate under state law. That is prohibited. We are not allowing packers to own cattle in Nebraska under state law. That is currently prohibited. See what happens in this conversation is for the last 25 years people have said this is what's doing the solution. This is the answer. And then when they find out that this is not in place anymore, then we realize it wasn't the answer. There were all kinds of other answers. But because of the need to promote and to try to preserve what was accomplished in 1982, we have to say it was. Of course, until somebody says it wasn't and they say, no, we never intended that. It has been a moving target as an argument in favor of I-300 since 1982. And to be candid, it has been a moving target against I-300 since 1982 as well. People have been all over on this issue

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and it's because they don't understand it. They don't. They don't understand the state laws that affect this conversation. They don't understand the federal laws that affect this conversation. And they definitely don't understand that all of those laws affect agriculture as an industry to be successful. And we can go through those scenarios. The reality is, is that there are bills this session that are designed to promote the opportunity that a producer... [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR ERDMAN: ...a young producer or a beginning producer, would be able to partner with an absentee landowner to ultimately own and gain operational control of that property for their benefit. If you're going to say that the only benefit that the state should provide is for those operations in which the owner-operator not only owns the property but also provides the day-to-day labor and management, then you're undermining our Beginning Farmer Tax Credit Act. Then you're undermining the bills that we have advanced unanimously by the committee to provide additional incentives for young producers to partner with absentee landowners and to be able to do that for their benefit and for the benefit of our agricultural industry. There is more to this conversation than simply this section of law. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Erdman. Senator Dierks, you're recognized. [LB1174]

SENATOR DIERKS: Thank you, Mr. Speaker. We've heard lots of conversation about the effectiveness and the ineffectiveness of Initiative 300. There's no question as to whether Initiative 300 was effective. It did everything that the people that wanted it asked for it to do. It didn't do things that some people thought that it should, but it did the things that it was crafted to do. With that, I'm going to give the rest of my time to Senator Dubas. [LB1174]

SPEAKER FLOOD: Senator Dubas, Senator Dierks yields you 4 minutes, 20 seconds. [LB1174]

SENATOR DUBAS: Thank you, Mr. Speaker, members of the body. I sent out some e-mails or I replied to some e-mails that I received from constituents regarding this issue, and I asked them some questions. You know, what do you see as the major challenges facing agriculture today and also what do you think the Legislature should do, if anything, to help address these issues? And these people were more than happy to share their thoughts and their views with me. And the challenges that they listed were: How do we bring young people back to the farm or how do we keep young people on the farm? How do we educate our urban cousins about the challenges that we face on a daily basis in agriculture just keeping, you know, dealing with our inputs, dealing with the huge amount of capital that's required, access to markets, land rents, land

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prices, you know, the list goes on and on as the things that we have to deal with on a daily basis that people in more urban settings aren't always cognizant of. We've lost that. You know, in days gone by everybody had a grandma or a grandpa or an aunt or an uncle on the farm and we've lost that connection. And so we are challenged to educate our urban counterparts. They said, you know, we need a commitment to incentivize agriculture just like we have in the business industry, helping to link retiring farmers with those beginning farmers. The Department of Agriculture has on their Web site they have a link, a land link site. And one of the people that responded in their e-mail said he went on that site and right now there are 11 people who want nothing more to do than farm, and they're on that Web site looking for someone to help them get into the business. And there was nobody on the other side of that looking to put their land up and go into a working relationship with them. It's very obvious that there is deep passion on both sides of this issue. And it's because we all care about agriculture. Those of us involved in agriculture and livestock production are working our tails off on a daily basis just to keep everything on an even keel. A good day for us is when we just break even. And, you know, so it's obvious again--I think I made this statement last night--we all have the same goal and objective. We're just looking at it from a little bit of a different perspective. I think LB1174 can be a part of a comprehensive approach to keeping farmers and ranchers on the land. I cited some statistics last night from a report on anticorporate farming laws in the United States by Rick Welsh. He goes on to say that there is a link between the health and welfare of rural communities and the characteristics of the farms that surround them. The potential for industrialized-style farming to displace the traditional family labor farm with other organizational forms has caused public concern within and outside of rural America. Specifically, agriculture dependent counties within anticorporate farming states were more likely to have lower poverty and unemployment rates and a higher percentage of farms... [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR DUBAS: ...earning cash gains than such counties in states without these laws. I think you've been given a lot of papers and charts to kind of reinforce some of these statistics. In one study, this study found that the size of farms is not as important as the ownership arrangements when measuring the link between farm structure and rural community welfare. The most important variable is not farm size, but whether a farm is a nonfamily corporation of some type or not. Anticorporate farming laws are beneficial to rural communities because they cement control over key aspects of the farming operation within the family farm household and thereby keep control more within the community. This is a good discussion that we're having today. We should be talking about agriculture in this state. Agriculture is the lifeblood of this state. [LB1174]

SPEAKER FLOOD: Time. [LB1174]

SENATOR DUBAS: It's what's holding our economy up when other states are failing.

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Thank you. [LB1174]

SPEAKER FLOOD: Thank you, Senator Dierks. (Doctor of the day and visitors introduced.) Returning to discussion on AM2319, Senator Erdman, followed by Senators Rogert, Aguilar, White, Dubas, Wallman, Carlson, Nantkes, Harms. Senator Erdman, you are recognized. [LB1174]

SENATOR ERDMAN: Mr. President, thank you. Members, let me get back to the bill. When we went through this process as a state before the federal district court, as well as the Eighth Circuit appeals court, they explained to us that under the Dormant Commerce Clause there were certain things that we were doing that were overly restrictive. And so in a remedy to accommodate that opinion, whether or not you find it to be well-founded or not, and ironically we had testimony at the hearing on the Ag Committee on LB1174 that pointed out that generally the judges that have been appointed by Presidents who support the Tenth Amendment or states' rights are generally the judges that reflect Scalia and Thomas, and the judges that don't support states' rights have generally come down on the side of what this opinion is, and that's on the federal level. And so there's a lot of politics, there's a lot of policy, there's a lot of philosophy in this whole deal. That's all part of this conversation, but now we're at the practicality of it. Under LB1174, as I explained earlier, we have to allow the same rights to similarly situated or similar rights to similarly situated entities in other states to make sure that we're not violating the Dormant Commerce Clause provision of the United States Constitution. And the way that you do that practically speaking is, is that you say any family farm in any state that does what we would have a Nebraska family farm do qualifies. And so you have set the bar at the same level. We provide you the same benefit if you do the same things. We are trying to be fair to similarly situated entities. But here's where we're not fair. Under this bill, we enforce that against Nebraskans. It would be practically and theoretically impossible to enforce this provision on those out-of-state family farm corporations. I don't know how you do it. Under the bill, you provide that the Secretary of State's Office monitors sales and receives reporting requirements of corporate entities in Nebraska relating to agricultural production. So the President and the shareholders provide their names and addresses to the Secretary of State. The Secretary of State also monitors the sale of land, the transfer of land in ensuring that it's not in violation of Initiative 300 and now, obviously, that was their previous responsibility, LB1174. Those additional requirements were actually added after Initiative 300 became law. They were additional components for enforcement. And we can have a conversation all day long about whether Initiative 300 was even enforced at all, but generally the entities that it was enforced against were the types of entities that we would all have wanted to actually been exempted under the law. The example where you have five family farmers trying to form a pig corporation to provide feeder pigs to each of them, and they would put the inputs in and receive the feeder pigs back and raise them and sell them, that was prohibited under Initiative 300. And it was claimed as a victory by the supporters of I-300. It really wasn't. But they had boxed

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themselves into a corner to say, well, we had to argue that way, otherwise the whole law was in jeopardy. So you go through this scenario and you say, how do we enforce it? In this area on the provision of family farm ownership, there is no mechanism in the bill for family farm corporations in other states that would qualify in Nebraska to be held accountable. So we are actually doing the reverse. We are not only providing a better benefit or the same benefit to out-of-state family farmers than we are our own, but we're actually being more strict...we're scrutinizing our family farmers more strictly than we have the ability to enforce on other states. And recognize this--the state can determine... [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR ERDMAN: ...who we provide corporate opportunities to. We determine that--LLCs, LLPs, professional corporations--those things are all a matter of state law or government-created protections. So what we're saying is, we trust you if you live in some other state as a family farmer and we assume that you're providing the day-to-day labor in that state, but practically the only people that we're going to enforce this on are Nebraskans. So we're actually discriminating against Nebraska family farmers under that provision and making it more restrictive on them to meet the requirements of LB1174 than what we can reasonably enforce or like to be expected in other states under the same provisions. It's not just where you draw the line, but what that line is intended to accomplish. I-300 accomplished the goal, and that was to limit corporate structure. The other things were either a result of other policies or were a collateral benefit or effect of that line. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Time. Thank you, Senator Erdman. Senator Rogert, you are recognized. [LB1174]

SENATOR ROGERT: Thank you, Mr. President. Today I want to clear up a few things. Once again we're throwing around some more misinformation. And I don't know if it's misinformation or just totally misunderstanding. Senator Kruse mentioned he had not received one phone call from a farmer in opposition to this bill. Well, I assume that's probably because he lives in town. I'm holding a slew of messages and I counted the e-mails just since I started saving them and keeping track in the last few days. I've got about 15 phone messages from yesterday and the day before and about 25 e-mails from the past three days in opposition from farmers to this bill. Honestly, I don't think they understand what the bill does. I think they're talking to the green copy, sometimes to the amendment or portions thereof, and I don't think everybody or hardly anybody understands what this bill is doing. As I read it and I continue to listen to the debate and I hear some more outside comment, I agree with almost everything and almost nothing that we talk about as we go through this. We're still treating agriculture in Nebraska differently than every other industry with this bill and in our comments and discussions. I'm not sure why we want to do that, but I'm not sure why we wouldn't want to do that

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either. Outside interests can still own land and farm in the state of Nebraska regardless of this issue, with or without it. I have absentee landlords in my district, my clients, my customers that farm land that's owned by folks in California, Texas, East Coast, West Coast, foreign countries. This will not stop that. Ted Turner can come in, anybody can come in and buy as much land as they want with the amount of money that they have. Limiting the liability of individuals getting involved in an entity--we let every other industry in the world limit their liability. Why wouldn't we let farmers limit their liability in some instances? I do agree that we should probably try and keep major corporate entities from owning land and farming and pushing out the family farmer. Will this do it? I don't know. We can still have a family farm entity that's owned by 52 percent myself and 48 percent Senator White, who is not a farmer--that 48 percent could also be Wal-Mart--until I get to the point where I want to have more than two entities, and then they all have to be farmers. So if me and my brother want to farm, we can form a family farm entity and let 48 percent be owned by somebody else. If myself and two of my colleagues here want to farm or be involved in farming, we all have to be involved in that farm. That logic doesn't follow through with me. I just don't think we're ready to pass this legislation. I think we need to continue the discussion and it's good. And we probably need to look at some ways of limiting outside interests. We've done that in the past with the livestock industry, such as Senator Erdman mentioned before. If you slaughter more than 150,000 in the state, you can't own cattle in the state. Let's look at some legislation that certain size, certain production acres you can't own land. I don't know. But the way this is written and the way this conversation is going, there is way too much confusion going on and there's way too many people that don't understand what this bill does and what is already being limited. Passing it may do no harm. Passing it may do no good. [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR ROBERT: That's where I come into problems with it, and it's another situation of trying to solve a problem that maybe doesn't need solved. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Rogert. (Visitors introduced.) Senator Aguilar, continuing the discussion on AM2319, you are recognized. [LB1174]

SENATOR AGUILAR: Thank you, Mr. President. I'd yield my time to Senator Erdman. [LB1174]

SPEAKER FLOOD: Senator Erdman, Senator Aguilar yields you 4 minutes, 50 seconds. [LB1174]

SENATOR ERDMAN: Thank you, Mr. President. Thank you, Senator Aguilar. One of the things that will likely continue to come up and one of the things I think Senator

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Raikes has touched on this and to an extent Senator White has, about the impact of production agriculture and providing food for consumers. Right now at the last estimate that we have, ag producers in America alone, these are just producers in America, produce enough food...each of them produces enough food as an operation to feed 143 people. That's both within America and worldwide. And, in fact, I believe the number is as high as a third to a fourth of that production actually is exported. If we're going to go through this process of talking about all kinds of other things, we can talk about all kinds of other things. The problem with some of those conversations is that it leads us to a solution that we have no control over. And it potentially leads us to answers that we have no solutions for. What we do know is that as you go through this process and you have a conversation, the conversation is generally between agriculture and agriculture. There are definitely people that are outside of agriculture that have an interest in agriculture. There are people outside of agriculture that have an interest in the public policy of agriculture. But this debate has been generally and will continue to be generally between those in agriculture. Senator Raikes has brought up and it was a point that I was going to make: If we are concerned about the communities, the local ownership of those interests, why don't we require owner-operator grocery stores in the state of Nebraska? You can go through those logical conclusions, and here's the problem with doing that. The problem with doing that is you point out that we're treating agriculture within the state differently, but that in itself is not a problem as long as we're treating agriculture outside of the state the same way. So we can discriminate against our own citizens within our state as far as the corporate structure that they would utilize because that's what we as a state have the right to reserve for ourself. It's how organizations are set up. Last year we created a limited cooperative association. That is a new business entity to provide for additional local ownership as well as additional investment opportunities while protecting those local owners in that process better than an LLC does. And it provides additional opportunities than a cooperative can because cooperatives generally, the closed cooperatives or the nonstock cooperatives, are those that are only comprised of their members. And if the members don't have the access to capital, it inhibits their ability to provide those opportunities. Here's one of the things going back to the enforcement that ties into this. As I mentioned earlier, the enforcement of I-300 was twofold. There was the authority by the Attorney General to enforce it, but there was the opportunity for Nebraskans to self-report or to report on their neighbors, if you will, self-policing or community policing of the act. Again, going back to the logic of we are now enshrining, contrary to Senator Kruse's comments, we are now enshrining in law a protection of corporate ownership for absentee landowners. And that's candidly what we have to do to comply with the ruling of the court if we're going to respond with the most closed version of Initiative 300 that we can come up with. But if that operation in another state that doesn't have this law doesn't report to us,... [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

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SENATOR ERDMAN: ...that there are things that that corporation are doing, how will we know to enforce it? There will be no self-reporting over there. And again, we are deciding as a state to limit the corporate and business opportunities and, again, we have corporations in Nebraska of family farmers, of owner-operators, of owner-operators pooling their assets, of families pooling their assets to accomplish a corporate model. That's a different conversation than accomplishing a successful agricultural industry. You may be able to accomplish a successful agricultural industry by preserving and promoting I-300 into the future, but there's no guarantee of that. You can still promote and preserve the great opportunity that our state needs to have an agricultural industry that's thriving with our without I-300 because there are always going to be other responses that we're going to need. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Erdman. (Visitors introduced.) Continuing in discussion on AM2319, Senator White, you are recognized. [LB1174]

SENATOR WHITE: Thank you, Mr. Speaker. I'd like to make a couple of points. First of all, as an attorney and as a profession that's denied the shield of corporate actions for my profession, we, all attorneys, must remain personally liable at all times. So the burden that we're talking about on the corporations in farming is no different than my profession proudly has carried throughout its history here. And I'd like to talk about a couple of just historical points so we can put what we're talking about in context. Thomas Jefferson claimed that the basis of the proper America that he hoped to build was the individual yeoman farmer owning his own land. The Homestead Act was absolutely radical and transformed this country because instead of granting huge blocks of land to the politically influential, the owners, the people in New York and other financiers, which most European countries did, instead it granted 360 acres to each family that would homestead it and thus transformed this country into Jefferson's dream. That is part and parcel of who we are as a people in our history. It is embodied in Nebraska law in many areas. For example, water--you cannot farm in this state without access to ground water in the vast majority of the land here. Even if you dryland farm, you need it to sustain livestock, you need it to sustain the people on the land. Water is not and cannot be owned by corporations or individuals. This state forever has held that fundamental resources like water, like the land, are a community trust. And those that would stand up and say, oh, you're all wrong and you're radicals and those times are gone, you are abandoning our history. Senator Dierks, Senator Dubas, myself stand foursquare with generations of Americans and Nebraskans that say the land is a common-owned heritage, it is a steward as is the water. Now if you want to walk away from that, I can understand that. It's a political debate--changes and ability and power shift. But don't stand up and say somehow we're out of line or radical, we're standing foursquare with tradition. The people who would turn our land and our water, our resources, over to multinational corporations that have no tie to this land, have no commitment to its health, have no commitment to its water, they're the radicals. We are conservatives talking to you from history. Now let's talk about corporate reality. Senator

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Erdman says, well, 150,000 head of cattle if you slaughter more than them, you can't own them. Senator Erdman, Pickett has already knocked that statute flat. It's a walking corpse. When the federal Court of Appeals said flat out there is no adverse competitive effect from the major big three packing companies that control 86 percent of all slaughtered beef in this country, when they said flat out there's no adverse impact from ownership of those and it does not violate any of the antitrust statutes, I have news for you. The Dormant Commerce Clause, as our district court and the Eighth Circuit has interpreted it, already says they can own it. You know what I don't trust? I don't trust what's called vertical integration. I don't like the same multinational owning the water, owning the land, owning the seed, owning the crop, owning the cattle, slaughtering the cattle, processing the cattle, owning the grocery store that then sells it to me and then tell me I'm better off. I don't buy it. I won't buy it. [LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR WHITE: And if I'm here alone, I know I'm in the company of generations of Nebraskans who didn't buy it either. Thank you, Mr. Speaker. [LB1174]

SPEAKER FLOOD: Thank you, Senator White. Senator Dubas. [LB1174]

SENATOR DUBAS: Question. [LB1174]

SPEAKER FLOOD: The question has been called. Do I see five hands? I see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1174]

ASSISTANT CLERK: 28 ayes, 3 nays to cease debate, Mr. President. [LB1174]

SPEAKER FLOOD: Debate does cease. Senator Dierks. [LB1174]

SENATOR DIERKS: I'd like a call of the house, please. [LB1174]

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. [LB1174]

ASSISTANT CLERK: 41 ayes, 0 nays to go under call, Mr. President. [LB1174]

SPEAKER FLOOD: The house is under call. All unexcused senators please return to the floor. Members, please return to your seats. All unauthorized personnel please leave the floor. The house is under call. Senator Erdman, you are recognized to close as we await for senators to arrive on the committee amendment, AM2319. [LB1174]

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SENATOR ERDMAN: Mr. President, I'll take that opportunity and I have appreciated the conversation. I will tell you again briefly what the committee amendments do and then I will have a response. The committee amendments rewrite the bill. The committee amendments make the provisions of LB1174 more consistent with the introducer's intent. They provide better clarity in the intent language. They clarify the definitions of family farm to family farm operations to ensure that the distinguishing terms are not geographically based, again in compliance with the court's rulings at the federal district court and at the Eighth Circuit level on the Dormant Commerce Clause. There is additional clarification in the committee amendments on the Americans with disabilities to ensure better compliance and more reflective language of the federal law in that area to ensure that if this bill goes forward that we have responded to those specific issues from the court on I-300. Practically speaking, everything else in the committee amendment and everything else then in LB1174, if the amendment is adopted, is a statutory rewrite of Initiative 300. Those are the two main provisions. Let's be clear about what you're standing for and what you're standing against. It is an insult, Senator White is going to laugh probably, but it is an insult to the members of this Legislature that are opposed to this philosophical approach that somehow the members who are family farmers on this floor are somehow not standing with the best traditions of our country nor our state nor this vital industry. If that's what this conversation was about, I missed that and I should have been more involved. Because all along this process, if you go back to the date in which the court struck down Initiative 300 and more specifically in January of 2007 when the Federal District Court of Nebraska enjoined the state of Nebraska from enforcing Initiative 300, our committee as a group, and I as the Chair, worked with all groups to find a solution. That's the process we went down, and there is a disagreement in Nebraska. But those that disagree with this amendment are not standing against those traditions. So we can throw rhetoric around and we can have all the fun we want to on the floor of the Legislature, but I got news for you. The people in my legislative district, the people in Senator Harms's legislative district, the people in Senator Louden's legislative district that overwhelmingly defeated Initiative 300 in 1982 are just as much in favor of the best traditions of agriculture that you can ever fathom. And I'm going to get worked up here if we don't have the time in a little bit, but I want to close with this. Under LB1174 and the committee amendments, Cargill--everybody says, oh, big, bad Cargill--Cargill is a family-held corporation. Cargill has farming and ranching operations, they have research facilities. Under this bill, Cargill has the opportunity to claim that they are a family farm corporation in Nebraska. Explain that one to me. Explain to me how that's consistent with the best interests and traditions that we thought we were doing under Initiative 300. It is not. And if one of the family members of one of the owners of Cargill is actually working in the day-to-day labor and management on one of those research farms, guess what? They are a family farm in Nebraska. We have gone way off stream on what this debate is about, and I think that was intentional. But here's where it comes back down to. This decision by this Legislature is about whether or not what we did in 1982 and the benefits that we received since then are consistent with the public policy that we as a state need...

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[LB1174]

SPEAKER FLOOD: One minute. [LB1174]

SENATOR ERDMAN: ...going forward. There are provisions of I-300 that were beneficial. There were provisions that were detrimental, in my opinion. The committee's opinion is to adopt the committee amendments and which the committee as a whole, minus myself, did. The committee's opinion, minus myself, advanced this bill to the floor. The committee as a whole wants you to adopt this committee amendment out of respect to Senator Dierks, but most importantly because they believe this is the right public policy. I disagree. I don't disagree because of comments made by Senator White or others on this floor. I disagree because I look at it as an ag producer, someone who used to be there, and looking at the people in my district that I represent, and most importantly, what's best for agriculture in the state. I'm voting against the committee amendment because I voted against it before and I'm going to vote against it here. The committee amendment becomes the bill. Let's vote. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Erdman. The question before the body is, should AM2319 be adopted? All those in favor vote aye; all those opposed...Senator Dierks. A roll call vote has been requested. Mr. Clerk, please call the roll in regular order. [LB1174]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1252.) Vote is 20 ayes, 27 nays, Mr. President, on the adoption of committee amendments. [LB1174]

SPEAKER FLOOD: The committee amendments are not adopted. I do raise the call. Discussion continues on LB1174. Senator Wallman, you are recognized. [LB1174]

SENATOR WALLMAN: Thank you, Mr. President. Enjoyed this emotional conversation here and debate about agriculture. And I've been to the ports of entry in our great country down in the South and watched stuff come in. And you don't think things are going to come in. I agree with Senator White on NAFTA. We're going to see more products coming into this country and you can't believe whether you go from L.A. or you go from Houston. And so corporate agriculture, whether it be...I'm not against the Cargill. I think they do some good things for farmers. But I also think what chemical input costs are now from Monsanto and these...one thing they want to do is make money. And farmers want to make money. And farmers like to stay on the land. And corporate ownership of property, it's going to happen. And is Initiative 300 perfect? Is this bill perfect? No. For goodness sakes, we passed an education bill. Was that perfect? No. There's lots of things that are not perfect for everyone, for every corporation. And Senator Dierks worked hard on getting this all together and we had from everybody, from Iowa state to our local entities and our agriculture colleges. They have concern about agriculture in our nation. And I think they...these are professors in

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our ag colleges, folks. These are not just your people off the streets. These are people that are intelligent and watching how corporate farming has got bigger, and that's part of the mechanical revolution in agriculture--bigger tractors, bigger combines. And that's why we have fewer people on the land. And it's partly our fault that we don't support our local grocery stores and things in our small communities. We go to the big cities because maybe our wives work there or we buy then where it's a little bit cheaper. That's our fault. We should have supported our rural America better. That's our fault. That's the farmers' fault. And so when we go to state basketball tournaments or something, we don't buy clothes at maybe local stores, we go shopping here. And that's our fault. So part of rural America declining is our fault as farmers, as business people, as agribusiness people. So anything we can do to start...and I appreciate Senator Dierks here. He's trying to protect it as best we can. And we know that it's not perfect. It can't happen the way we all want it. And it seems like we are singling out one branch of business--agriculture. But it is the most important business in our state. And I'd like to ask Senator Hansen a question. [LB1174]

SPEAKER FLOOD: Senator Hansen, will you yield to a question from Senator Wallman? [LB1174]

SENATOR HANSEN: Yes, I would. [LB1174]

SENATOR WALLMAN: Thank you, Senator. Did Initiative 300 affect your business any? [LB1174]

SENATOR HANSEN: Yes, it did. [LB1174]

SENATOR WALLMAN: Do you think it hurt it? [LB1174]

SENATOR HANSEN: It certainly did. It hurt me to the point where I couldn't get together with several other--at that time I was a lot younger--other younger people and form a feedlot. The feedlot industry in this state has grown immensely since 1982. And I couldn't be a part of it because I didn't want to run a feedlot, I didn't want to live on that feedlot and run on a day-to-day basis. I wanted to hire somebody to feed my cattle and I couldn't do that. And just a limited part, the limitations is what hurt. [LB1174]

SENATOR WALLMAN: Thank you. [LB1174]

SENATOR HANSEN: I went broke all by myself. I didn't take a group of us. [LB1174]

SENATOR WALLMAN: (Laugh) I thank you. And I realize that we take...we like to spread our risk out. But still, the ultimate risk is to the producer. If your cattle in the feedlot and they die, I had that happen to some friends of mine. They took their cattle to Missouri. Guess what? Those cattle were missing and they were branded. Did they go

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to court for stealing or nothing? No. Did those people get punished? No. So if you turn your assets over to somebody else, you or I are at risk. As bad as that may sound, that's the way it is, unless you have insurance. That's all, Mr. President. Thank you.  
[LB1174]

SPEAKER FLOOD: Thank you, Senator Wallman. Senator Carlson, you're recognized.  
[LB1174]

SENATOR CARLSON: Mr. President and members of the Legislature, I've not spoken on this bill and I'm going to speak once and that will be it. But certainly many of us have learned in our experience in the Legislature thus far that there are issues that generate passionate feelings and that we can't vote to please everyone. One of the things that I don't like is taking a vote against someone that I very much respect, as I do Senator Dierks. But LB1174 is one of these bills that does generate passionate feelings amongst people. We've gone through the death penalty. I've brought up abortion. We've debated academic assessment, state aid, highway bills, gas tax. And these all are issues that we cannot vote in such a way that we please everyone. We can vote yes, we can vote no, we can go not voting. Whenever possible I try not to take the avenue of not voting. I grew up on a family farm. And you talk about people that are small operations, the Carlson farm is a small operation. I want it to remain as a farm and operate as a farm. My dad is 92 years old. He still mentally manages his portion of the farm and will continue to do so as long as he can. I cannot operate our farm by myself and make a living. So we rent to a larger farm corporation. When I grew up in our section of land, there were five farmhouses, all individual farmers. Obviously that's no longer the case. It can't be. I listened to Senator Hansen talk about the situation with livestock and I've had constituents call me and they're concerned about corporate control and ownership of livestock. Senator Hansen indicated that 35 percent of the cattle in Nebraska are corporate-controlled. Well, they're corporate-controlled because individual feeders make that decision to contract ahead because they're trying to make a profit. They're trying to guarantee that they can stay in business. There's nothing wrong with that. I had an occasion to speak with a very, very nice elderly gentleman this week. Part of it was because he observed my wife and I with our twin grandkids--two of the cutest kids in the world. And he came up to me afterward and started talking to me in support of LB1174. So I listened to him. And he told me that he had just sold all of the...almost all of the family land. And he didn't like it because there were five or six young farmers that wanted to buy that land and they got together and they got their financing lined up and they didn't get the land. And he didn't like that. I said, why didn't they get it. Well, they couldn't bid high enough. And I don't remember for sure if he said to beat the big boys, or what he said, and I should have asked but I didn't. I'm assuming it's probably another farmer that was more well-heeled than these young people. It may have been a family farm corporation. I'm guessing it was probably one of the two, I don't know that for sure. I said, why'd you sell it to them, you didn't have to. Well, yes I did. I said, why. Because it was an auction. Well, why did you put it on auction? Because my four or five brothers

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and sisters wanted the best price that they could get. [LB1174]

SPEAKER FLOOD: 30 seconds. [LB1174]

SENATOR CARLSON: So you have a situation with one member of the family wanting to control price and keep it down, and understandably so, and 80 percent saying sell for the highest bid. That's one of the dilemmas of debating this issue and talking about LB1174. Thank you. [LB1174]

SPEAKER FLOOD: Thank you, Senator Carlson. Senator Harms, followed by Senators Karpisek, Dierks, White, and Erdman. Senator Harms, you are recognized. [LB1174]

SENATOR HARMS: Thank you, Mr. President and colleagues. You know, if we are truly interested in revitalizing our rural areas, we should not and must not implement policies that do not discourage ranchers and farmers from raising risk capital so that they can invest in some of the newer ideas and newer thoughts and the niches in agriculture that are occurring across rural America, to give them the opportunity to be competitive with a new world global economy. While the goals of I-300 and LB1174 are noble, there's very scant evidence that I-300 did anything to prevent the decline of the rural areas or to help the farmers. I believe very strongly that it did more to hurt. When the times became difficult, when the times were hard, when we needed to have investment, when we needed to have capital we didn't get it. We didn't have the opportunity to invest. We didn't have the opportunity to move into the new global world economy and be competitive. And that's why we're struggling today. And we'll continue to struggle. This bill does not give us any relief or any help in this area. We were arguing about protecting the family farm. The family farm is in trouble. The family farms need to have an investment where people could come aboard and invest in capital and move them forward and be involved in the future of agriculture. Do we believe if we did the same thing in retail and manufacturing and other businesses that they would be successful? No, they would not be successful. No, they would not be competitive. You cannot limit it. We must have the opportunity, colleagues. We must have the opportunity, colleagues, to be competitive. We must not limit what the future is going to allow for us. We must give the farmers and the ranchers the opportunity to get involved if they need risk capital, to be able to put together partnerships and corporations that make them competitive. I would urge you to vote against LB1174. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Harms. Senator Karpisek, you're recognized. [LB1174]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. As I said last night, we're all after the same thing. We're trying to help the family farmer stay in business. Senator Harms makes some wonderful statements and I think that maybe a

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lot of us are seeing a little bit of each side. The part of the other side that I see is Senator Dierks trying to let five people go in together. When Senator Hansen said I-300 wouldn't let him go in with anyone else, that was true. It wouldn't in a corporation, but it would've let him go into a partnership. There are many partnerships in the business world, not only in farming. There's a lot of them. And I understand the liability issues, I understand where they're going with this. Again, I think five people going in together to form an LLC would be a good idea. I think it really helps the bill. I think Senator Dierks has really reached out here to try to come to some middle ground. But I don't see any middle ground coming from the other side. Why is that? Because they don't have to, I guess. They've got it the way they want it right now. I do see many issues here that...even the state sees things differently. Senator Erdman is correct. His end of the state did not vote for I-300, my end did. The four counties in my district did. I think it has worked out well. I don't think that we would have any more farmers in this state, family farms, if I-300 would have never gone into effect. What scares me, people, is these big conglomerates coming here, buying up the land, and have our family farmers working for them for small wages. That scares me. Or bringing in their own workers to work for even smaller wages and our family farmers be gone. That scares me. Am I looking too far into it? I may be. That does worry me. That is why I have been for I-300. That is why I am in favor of LB1174. I hope everyone still runs it through their mind; I have. I keep coming down on the side of pro I-300. I'd like to yield the rest of my time to Senator White, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Karpisek. Senator White, you have 2 minutes. [LB1174]

SENATOR WHITE: Thank you, Senator Karpisek, Mr. Speaker. I'd like to make a point in response to Senator Harms, Senator Erdman, Senator Hansen, Senator Wightman. Let's...Senator Harms has talked about we need corporations, we need help. And I would tell you, Senator Harms, as a guy who's litigated corporate involvement in the feedlot industry and in farming industry, that's like saying the wolf is out in the pasture eating the sheep; let's get control of the wolf by bringing him in the house. I think it's a serious mistake. And let me tell you why I believe that, and I will give you a specific example, because analogies and metaphors are fun but we really need to make decisions based on human experience. One of the most single devastating incidents to agriculture in this state was when bovine spongiform encephalopathy--if I got that right, "Cap" will correct it if not--mad cow disease hit. Knocked the bottom out of the entire beef industry. But what a lot of people don't know is that we lost two critical markets that could have been saved--Japan and South Korea absolutely stopped importing our beef. And do you know why? Because the big three packing companies that you want to own more land, have more influence, flat-out killed any effort to test each carcass for mad cow disease and to ship them to Japan. They killed it. And even when small packers like Coldwater Creek in Kansas wanted to test so they could preserve that market for our ranchers and our feeders, the USDA was heavily lobbied by the big three and they

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made it illegal for them to test. You are inviting the people that flat-out killed one of the most lucrative markets... [LB1174]

SPEAKER FLOOD: Time. [LB1174]

SENATOR WHITE: ...we've ever had. Thank you. [LB1174]

SPEAKER FLOOD: Thank you, Senator Harms (sic). Senator Dierks. [LB1174]

SENATOR DIERKS: Thank you, Mr. Speaker, members of the Legislature. I guess it's up to me to tell you, and you probably know, I am extremely disappointed in the outcome of that vote on the amendment. The committee amendments make the bill valid. Without the committee amendments, it's really not a valid bill. So, well, I'd just like to mention a few things that I think that I didn't get to mention. I thought I was going to get to do a closing. But the amendment came from the committee so Senator Erdman got to do the closing on it. Number one thing is, if we elect to keep the amendment--and I could do that by filing a reconsideration motion--if we elected to keep the amendment, we'd be putting something in statute that we can talk to every year. We can touch it, we can tweak it, we can do whatever we want to with it. When it was in the constitution, we couldn't do that, folks. That constitutional amendment was solid. You didn't tweak that. But with this in the statutes, it's eligible for amending and it can be done. And you know how easy it is to amend statute. I think that the process that we were talking about ensures the fairness to family farm entities. And that's what we're trying to do, is just make it fair for those people who are engaged and in farming in our state. I have many serious misgivings about corporate America. You've heard me speak about that. And I think that what happens in corporate America will have some fallout in Nebraska. And so I have to be concerned about that fallout. And some of it we can control with LB1174 as it was amended. I'm still trying to make up my mind exactly what course to follow. I thought that I had 25 votes and I see that I lack 5...or actually lack 4 of making it work. So I'm going to hope we can keep discussing this just a little bit until I can find out, you know, if I'm going to be able to make some corrections in the way the vote was done and then we'll...I'd like to move on. I think we got a lot of other stuff we need to do. And with that, I'm going to close and ask that you continue to have some faith in what I'm trying to do and some support for the process. Thank you very much. [LB1174]

SPEAKER FLOOD: Thank you, Senator Dierks. Senator Erdman. [LB1174]

SENATOR ERDMAN: Mr. President, I was going to call the question, but I'm not. There are two lights on. Out of respect to Senator Dierks, I believe that that ten minutes allows him some additional time to consider what his options are. And out of respect to him, I will not be calling the question and allow him that additional time. Thank you, Mr. President. [LB1174]

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SPEAKER FLOOD: Thank you, Senator Erdman. Senator White. [LB1174]

SENATOR WHITE: Thank you, Mr. President. I won't speak long. I wanted to finish the comment. For those of you who did live through the mad cow incident, do understand, without question, the big corporate farmers that do packing, the big corporate agricultural interests flat-out lobbied and won the USDA to prohibit testing of carcasses at the cost of approximately \$20 a carcass, which would have preserved your key markets in South Korea and Japan that we still have not won back. And they did it because it fit their corporate plans, though it was devastating to small Nebraska livestock producers. That's the wolf. I would strongly suggest you do not invite him inside our home. Thank you. [LB1174]

SPEAKER FLOOD: Thank you, Senator White. Senator Dubas. [LB1174]

SENATOR DUBAS: Thank you, Mr. Speaker and members of the body. I really enjoyed the interim hearing that we held on this issue this past year. And Senator Erdman was kind enough to take that interim study across the state. So we were able to hear from the east to the west end of the state what people's thoughts and feelings were. And again, just like this debate on the floor, those thoughts and feelings were varied and they were passionate on both sides, again with the underlying common thread of, you know, we just want to make a living out here, we want things in place that will allow us to move forward with our business and grow agriculture in the state. I learned a lot of things from that interim study. The 1031 exchanges was an issue that I hadn't had much experience or understanding of, and that's a big issue in all areas of the state. It was an opportunity, and I think there were some good thoughts and ideas brought forward through that interim study that I think has possibility for future legislation, that we could get a consensus agreement on. And I hope that we're able to follow through on some of those thoughts. I'd like to just continue sharing some of the things that I learned from this study conducted by Dr. Rick Welsh. He talks about that since the early twentieth century, U.S. agriculture has been characterized increasingly by a loss of farm numbers. We know that without exception here in Nebraska as well as across the state. Increasing average farm scale, increases in the use of hired labor on farms, vertical integration of farming with off-farm businesses, and upsurges in contract farming. These changes have been uneven across the time and place, but in general have characterized the development of U.S. agriculture in the twentieth and early twenty-first century and have caused some observers to argue that agriculture is industrializing. He goes on to talk about concerns over structural change in the United States agriculture have generated public policy. That's why we're here today talking about this, because there are these concerns about the large so-called faceless corporations that are coming into our state as well as other states and putting the independent owner-operators in a position that causes them to struggle with their business. And not just farming, all types of businesses. I appreciated all of the groups that came and testified on this bill. And my question to most of them is, if this isn't the answer, then

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what is? And there's a little bit of hesitancy on what the answer is, if there even needs to be one. But I would hope that, as Senator Dierks said, if we're able to get this put into statute. It's a work in progress. It's something that we can continue to bring all the interested parties together on and try to address the concerns that were raised as far as the objections go and, again, find programs that we can agree on that will promote, encourage, and support an industry that I have a great fondness for and that truly is the lifeblood of our state, that has kept our economy strong through some of the downturns that we are seeing, and that we can move forward. Thank you, Mr. President. [LB1174]

SPEAKER FLOOD: Thank you, Senator Dubas. Mr. Clerk. [LB1174]

CLERK: Mr. President, Senator Dierks asks unanimous consent to bracket LB1174 until April 17, 2008. [LB1174]

SPEAKER FLOOD: Any objections? So ordered. LB1174 is bracketed until April 17, 2008. Mr. Clerk. [LB1174]

CLERK: Mr. President, some items, if I might. Mr. President, new A bill, LB1130A by Senator Synowiecki. (Read LB1130A by title for the first time.) I have amendments to be printed: Senator Heidemann to LB928. I have a confirmation hearing report from the Transportation Committee signed by Senator Fischer. And a communication from the Governor. (Read re LB1094 and LB1094A.) (Legislative Journal pages 1252-1254.) [LB1130A LB928 LB1094 LB1094A]

Mr. President, LB245, the next bill on General File, offered by Senator Johnson. (Read title.) Discussed yesterday. At that time, Senator Johnson, as Chair of Health and Human Services Committee, offered the committee amendments. He then offered an amendment to the committee amendments, AM2317. That amendment is pending, Mr. President. (AM542, Legislative Journal page 730, First Session, 2007. AM2317, Legislative Journal page 987.) [LB245]

SPEAKER FLOOD: Thank you, Mr. Clerk. We will return to discussion on AM2317 to AM542. Senator Johnson, would you give us a brief two-minute update as to the content of AM2317? [LB245]

SENATOR JOHNSON: Yes, I will. And thank you, Mr. Speaker. What we had yesterday was this; that we had the bill itself that had been introduced last year. As a result, we wanted to make sure that there was adequate time for the bill to be considered at the polls. And basically that's what both of these amendments are. It moves back the effective date of the requirement to add fluoride to the public water supplies to the same amount of time or period provided originally in LB245 and advanced by the Health and Human Services Committee last year. What this does is cities and villages with a population over 1,000 currently that do not fluoridate their water will have until June 1,

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2010, to "opt out" using the two methods provided in the amendments, AM542. The second change is this, moves back the effective date from May 2009 to June 1, 2010. Again, this change allows the city or village to use their regularly scheduled primary elections in May as a vehicle for the possible opt-out of the fluoride requirement. Mr. President, I believe that summarize where we're at. [LB245]

SENATOR AGUILAR PRESIDING [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. Additional conversations? Senator Johnson. [LB245]

SENATOR JOHNSON: Thank you, Mr. President. Just want to follow up a little bit from our conversation yesterday. One of the things that I did want to talk about is this, is there was a question about the CDC statement regarding fluoridation of water. We have the last...this was reviewed on September 26 of this past year. Here are some of the highlighted comments. The Center for Disease Control community water fluoridation is, quote, safe, effective, and inexpensive way to prevent tooth decay. There are now more than 170 million people in the United States who enjoy the benefits of this fluoridated water. What was considered in this was what happens with the excessive levels of fluoride. And yes, there are problems that are involved with it, just like any other abnormally high substance. But there has not been anything of substance ever determined with the levels of fluoride that are used. You have to get up to four or five times the normal levels. In fact, let me just read this. The finding of the National Research Council report are consistent with the Center for Disease Control's assessment that water is safe and healthy at the levels used in fluoridation of water supplies; .7 to 1.2 milligrams per liter. The CDC reviews the latest scientific literature on an ongoing basis and maintains an active national community water fluoridation quality assurance program. The Center for Disease Control promotes research on the topic of fluoride and its effect on public health. The fact remains that community water fluoridation is safe and effective in preventing tooth decay. Water fluoridation should be continued in communities currently fluoridating their water and extended to those without fluoridation. This is of September 26, 2007. Now let's go on to a few other things. One of the things is this, is if you will note that the League of Municipalities was neutral on this unfunded mandate. This is something highly unusual for the League of Municipalities with unfunded mandates. They've always been against these. Now I'm going to try and express where they're at on this. And I don't have a written statement. This is my statement so I hope that I'm reflecting accurately what they think. One, why aren't they against this other than the unfunded mandate? Well, they do see the significant dental health benefits and also the potential savings. But here's the big thing: if for adoption of local sales tax and exceeding budget lid of the local governments, what happens is this... [LB245]

SENATOR AGUILAR: One minute. [LB245]

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SENATOR JOHNSON: ...in our municipalities. Both of these things have the question on the ballot placed by the city council or the petition process. In other words, the League of Municipalities over the years has done exactly what we are doing in this bill. So we are consistent with that and that...therefore, I think that is still the best way for us to go. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. (Visitors introduced.) Continuing debate, Senator Preister, you are up. You are recognized. [LB245]

SENATOR PREISTER: Thank you, Mr. President. Good morning, colleagues. I respect and appreciate Senator Johnson giving us the information that he did this morning. He did acknowledge that we have fluoride in higher concentrations. That is a problem. It can concentrate. Let me tell you something that rises to the level of concern for me. This is an article that was recently published in the Milwaukee Journal Sentinel. It was written by Susanne Rust and Meg Kissinger. It states that the EPA's voluntary children's chemical evaluation program, which relies on companies to provide information about the dangers of the chemicals they produce, is all but dead. Funding ran out last August. Committees haven't met in nearly a year. Key members of the program can't even say if it is still alive. The EPA's own advisory committee blasted the pilot program as severely flawed and has called for a total overhaul. Still, EPA administrators call the program a priority and routinely cite it as proof that the government is answering concerns about kids being exposed to potentially dangerous household chemicals. Our own watchdog group that should be looking out for kids is ineffective, like many other federal programs whose funding has been cut. Fluoride in high concentrations, and we don't know the concentrations that these children receive, is dangerous. I told you yesterday to look at your own toothpaste. If you want to see it for yourself, I've got one here. I'm sure it says the same on any that you would have. On the back of this toothpaste it says warning, keep out of the reach of children under six years of age. If you accidentally swallow more than used for brushing, seek professional assistance or contact a poison control center immediately. I think it's up to each of these communities individually to make their own decision if they want to put fluoride in the water. My concern is fluoride, when it's next to the enamel, does in that way help to reduce dental caries, I'm told. Although I did cite a study yesterday of 39,000 kids and it said that there really wasn't much difference between fluoridated water and the kids who didn't have fluoridated water in terms of the number of dental caries that they had. But my concern is we don't know the concentrations of fluoride that these children will get. When you put it in the water, it's put in in a dose. That dose moves through pipes, some farther, some shorter distances. The concentrations that are in the water then are consumed by the children. I'm particularly concerned about kids that are under the age of probably 12, those very young children. Some of them getting fluoride in their formulas, some of them getting it in their food. They're getting it in multiple sources and in those quantities we don't necessarily know the consequences. And as I just read to you, the federal agency that's

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supposed to be looking out for this had its budget cut. Their committees haven't met in over a year. They're nonfunctional. So who's looking out for the kids? Well, I know that this bill is likely to go, it's likely to be advanced, it's likely to be passed. But I'm at least one voice. And as long as I have voice, I'm going to speak out for the kids. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Preister. (Visitors introduced.) Senator Johnson, you are recognized. [LB245]

SENATOR JOHNSON: Thank you, Mr. President. First of all, let me say this. Every legislature needs a Senator Preister. We need someone who is going to question what is best for our environment and for those of us that live in this environment. When I came down here, my predecessor told me this. All the easy decisions and laws have been made. We must remember that and question everything that we do. So I really applaud Senator Preister for bringing up these issues so that we can reassure you as best we can. One of the things that I would suggest for those of you who will be here next year is this: question the source of the material that you have. And then look for the ability of others to duplicate the results of the material that you've been given. That is kind of the acid test as to the likelihood of being correct. With that, I would yield the rest of my time to the Chair. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. Senator Wallman, you're next and recognized. [LB245]

SENATOR WALLMAN: Good morning, Mr. President, members of the body. The city of Beatrice, this is my district and this is the concerns they have. And they sent me an article from the city of Del Rio, Texas, and I appreciate Senator Preister's concerns also. And fluoride is four times more toxic than lead and accumulates in body tissue and cannot easily be removed. And along with the toothpaste issue, which we had plenty of information on then. So how many dentists have you been to who tell you to swallow the fluoride treatment solution after swishing it around your mouth? All the dentists I've been to told me to spit it out. On this very same point, most tubes of toothpaste instruct you to never swallow and rinse your mouth after brushing. And most pediatricians advise against exposing young children to any type of fluoridation, particularly toothpaste. So there's plenty of cavity-fighting fluorides already in toothpaste. And to force cities to pay for a system to add additional fluoride to their drinking water supplies they think is absurd and just plain dumb. So it's another mandate. I'm against mandates, as you all know. But is fluoride really, like Senator Preister said, saving our teeth? You know, we go to the cavities and everything. That's part of our diet nowadays. Sugar, sugar, sugar. Our soda pops, candy bars, some of those things we didn't have way back when I was a child. We didn't have much pop to drink. So I think we look at fluoridation as helping things. Maybe we're not getting the right answer. And I'd yield the rest of my time to Senator Preister. [LB245]

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SENATOR AGUILAR: Senator Preister, you have 3 minutes. [LB245]

SENATOR PREISTER: Thank you, Mr. President. Thank you, Senator Wallman. I haven't given up, even though it may have sounded like it in the last time. But I don't have any amendments, but I do have the concern. And Senator Wallman, you highlighted some as well. The fluoride in itself, when it's applied topically, has a benefit. When it's systemic, when it's in the system, it does accumulate and it's not easily gotten rid of. We know that more and more children have attention deficit disorder. We know that more children have autism. More of our children have a host of maladies that didn't used to exist when they ate whole foods, when they got exercise, when they got fresh air, when they weren't bombarded with a host of things. This is just one of a host of things that our kids' bodies, especially the very young children, are having to contend with. When we think it's only a little bit and it's under allowable allowances, it's not a problem. But when that's multiplied by so many different ones--from the air, from the water, from the food--and then when we intentionally put it into water and we do it in the name of helping them, we also can be creating more complex health problems. All doctors know about drug interaction. You're supposed to check with your doctor before you take more than one medication. And yet we're putting a host of different kinds of medical, chemical kinds of substances in young people, and then those young people's bodies are supposed to deal with it. The livers, the developing child is overwhelmed these days. I think we need to be very careful. We need to apply it on the tooth, if that's necessary. I realize that's not easy to do. I realize that some of the low income children don't have access to dentists. [LB245]

SENATOR AGUILAR: One minute. [LB245]

SENATOR PREISTER: But more and more that is available and there are county health clinics, there are free health clinics and dental clinics more and more in poor areas. Not necessarily in all of the rural areas, but we're seeing more of them around the state. And I think that's a better approach than treating water when you don't have total control over amounts. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Preister and Senator Wallman. Next up to speak is Senator Engel. [LB245]

SENATOR ENGEL: Mr. President, members of the body, I've been listening to this debate the last several days and I haven't participated up to this point. But I listened to enough of it. I certainly support the bill itself. And there's...we've been...I think they've been fluoridating water in the state of Nebraska for probably about 50 years. When I was a child, and that was before 50 years ago, that was back during the Depression days when they didn't have fluoridation in water and they also...most people didn't have any money. So they didn't go to dentists on a regular basis. And so therefore there's a

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lot of kids who grew up with a lot of cavities. I was very fortunate. I didn't...never been to a dentist until I was probably in junior high school but I didn't have any cavities, but probably the way I was fed at home. But the thing is, that's not the situation, especially today with all these fast foods and the way all these children eat. And then as far as the poor children today, they are not going to dentists on a regular basis either. So I think it's very important that we do everything we can. And as far as...fluoridation has been safe for 50 years, I think it's still safe today. I don't...I know I've been listening to Senator Preister, and as far as the proof, he said there isn't any proof. But I don't know...or what the results are as far as taking this fluoridation for younger children. Well, I don't either, but evidently there hasn't been any danger or these dentists wouldn't be promoting it all these years. So I think we do have fewer cavities. I think we have healthier teeth. And as far as the mandate part of it, I've never cared for mandates either but there is an opt-out. So if the communities do not want to do it, they don't have to. So that takes care of my opposition to the mandate. The mandate is there if you want to do it. But you don't have to because the people can opt out of it. And I think this should be left up to the people in their respective communities. They say, is it worth it for the dental hygiene and the welfare of our children, or isn't it. But they'll make that decision on a local basis. So I certainly support this bill and I think it's been debated very well and I think we can probably move on. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Engel. There are no other lights on. Senator Johnson, you are recognized to close on your amendment to the committee amendments. [LB245]

SENATOR JOHNSON: Thank you, Mr. President. What this does is very simple. The change made by AM2317 moves back the effective date from May 2009 to June 1, 2010. This change will allow the cities or villages to use regularly scheduled elections as late as May of that year as a vehicle for the opt-out. This will, by using these general elections, then it will minimize the cost of having an election. And so it's done strictly for that point and I would ask for your approval of this amendment. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. You've heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB245 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB245]

ASSISTANT CLERK: 27 ayes, 0 nays on the adoption of Senator Johnson's amendment to the committee amendments, Mr. President. [LB245]

SENATOR AGUILAR: The amendment is adopted. Mr. Clerk. [LB245]

ASSISTANT CLERK: Mr. President, Senator Langemeier would offer FA256 to the committee amendments. [LB245]

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SENATOR AGUILAR: Senator Langemeier, you're recognized to open on your amendment. [LB245]

SENATOR LANGEMEIER: Mr. President, I'd like to withdraw FA256. [LB245]

SENATOR AGUILAR: So ordered. [LB245]

ASSISTANT CLERK: Mr. President, then Senator Langemeier would offer FA257. (Legislative Journal page 1198.) [LB245]

SENATOR AGUILAR: Senator Langemeier, you're recognized to open on FA257. [LB245]

SENATOR LANGEMEIER: Mr. President, members of the body, FA257 would expand on what Senator Engel talked about: local control and the local opt-out. This amendment would allow the city council to, with a majority vote of the city council, opt out without going to a vote of the people. It would be strictly left up to the city council. However, it would also remain in the committee amendment that you just adopted that provision that would allow the city council to make a ruling and put it on the ballot. That would remain. The people could petition to get it on the ballot to vote on it. This would add a third choice. It would just be the city council making the decision to opt out and I'd ask for your support of FA257. [LB245]

SENATOR AGUILAR: Thank you, Senator Langemeier. Those wishing to speak: Senator Gay. You are recognized. [LB245]

SENATOR GAY: Thank you, Mr. President. On this particular amendment, I wanted to speak to what Senator Langemeier is trying to do. There was...the prior amendment, of course, what he's amending it to, was created just for the provision of an opt-out of where the happy medium is, I guess. And that's what this discussion will be about. How easy should it be for a community to opt out? The committee...the reason this even got out of committee was with an opt-out amendment. And the opt-out amendment was that a council can put it on the ballot fairly easily or an individual citizen who feels strongly for or opposed to this can put it on the ballot. Those were in there. There's a certain point though, when you think about it, you're going to have to decide as a body what you want to do. And I know Senator Johnson will oppose this amendment, I would think. And we'll see what happens. But we got to decide what balance we want to create. We've discussed the merits of the fluoridation, some of the savings we think that could be achieved through fluoridation on those people who maybe can't afford the dental opportunities that more upper income people can do, proper dental care and some of those things. So a lot of Medicaid patients are going to benefit, I think, from this and I'm going to support the bill. But there's a certain point we have to decide where we want to

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go. But that's how...I just wanted to put that on the record for the rest of you of how I thought we arrived at these amendments. They're good amendments. We also had the amendment in there if you have naturally occurring fluoridation you don't have to do this. So we did think about this. We made concessions, I thought, that were appropriate. We'll see what you all want to do on this and we'll have a good debate. But I just thought it was appropriate to get that out there. Senator Erdman, myself, and others wanted this amendment included so it would not be a, quote, mandate. There is an option out of it. It's a little more difficult. This would make it easier, obviously. But we're here to balance, I guess, that fine line of what we need to decide to do. Should we make it extremely easy to opt out? I'm not so sure. So I'm going to listen to the debate on this and see where we go. But I thought for the record we should put that in there. Very quickly, too, I did want to say yesterday in debate, was winding down, but I did want to talk about the Mission of Mercy and some of the great things they've done over the years, the savings up to \$3.5 million now on some of the projects they do where they go out in communities and provide free dental care to recipients. People line up. I haven't had the pleasure to be at one. I know several other members spoke about it and we had an update on that. And one is coming to the Omaha metro area next year, I think. But I just wanted to go on record commending the Dental Association and some of those volunteers. Not just them, but the people who donate food and supplies and make this a success. It's quite a great accomplishment that Nebraskans are doing for other Nebraskans. So I wanted to get that on the record because Senator Johnson handed out that sheet showing how the Mission of Mercy has been saving us a lot of money and I think we should all recognize that fact. Now by adding the fluoridation, some of us believe that we can save more money and help ease some of the problems that are with...that go along with some of these conditions that kids have--primarily some of the kids but adults, too--where they just haven't had the opportunity to have some of the things that we have that we take for granted. So as we discuss this, I just wanted to get back to the point of we did put what we thought were good opt-out provisions. This would make it extremely easy, I guess, for a community to opt out. And I don't know if we want to do that or not but we'll have that debate. Thank you, Mr. President. [LB245]

SENATOR AGUILAR: Thank you, Senator Gay. Next up is Senator Erdman. You are recognized. [LB245]

SENATOR ERDMAN: Mr. President, members of the Legislature, I rise in support of this amendment. I have...(Laugh) I fell on my good side of my head evidently and decided to advance this bill with the rest of the committee based on the amendment that was agreed to. The other part of this, however, that you need to realize is that this isn't the first time that the Legislature has had this bill introduced. Senator Jensen, when he was Chair of the Health Committee, introduced this bill at least two different times. Both times the bill was introduced it was incorrectly drafted. And because of work of myself and others that already had naturally occurring fluoride in their systems because of their wells, we had to amend the bill. So we did that. We made a further accommodation that

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the people that are in these communities would have the opportunity to vote to opt out of this law before it became effective. You are familiar with that theory from the smoking ban. The difference is, and as Senator Johnson will tell you, and the reason why there's an opt-out here is because this costs the actual municipality money. It may not be the level that Senator Hansen is speaking of in North Platte but it does have a cost and it is an additional responsibility. However, all of these communities--and this is for the record--all of these communities that are above 1,000 people have already done this once. They've done it once already. We are asking them under this bill to reconsider their vote if, for lack of a better example, of what they've already done. York, Seward, Beatrice, these communities have already voted one time to opt out. If the argument is, is that we need to provide a mechanism for it to be easy for communities to say no again, then I think Senator Langemeier's amendment is keeping with that spirit. One of the logical arguments you're going to hear against this is that the city councils or the village boards don't want the responsibility of voting no. And so giving them the option of putting it on the ballot is just as good because they can vote to put it on the ballot without making the difficult decision. Again, what we're discussing is the process to allow communities that have already said no--and there are potential communities that weren't at 1,000 in 1972 or whenever this was originally done--to be able to have this new requirement because it wasn't required after that vote. But we're discussing how it happens. I think the bill is fair. I think Senator Langemeier's amendment provides the same opportunities because even though it's going to be placed on the ballot, there potentially still is some cost in addition to whatever the community would decide in going forward with fluoridation. So I think this is helpful. It may not be what Senator Johnson wants, and I would agree that the language of the bill, both with the committee amendment and with the conversations that we as a committee have had, have made this bill better. But I do think Senator Langemeier offers us a viable opportunity to consider and I hope it will be. Thank you, Mr. President. [LB245]

SENATOR AGUILAR: Thank you, Senator Erdman. Next up, Senator Johnson. You are recognized. [LB245]

SENATOR JOHNSON: Thank you, Mr. President. The last bill that we just got done talking about, I forget the date, Senator Dierks, that this became law the first time. But the last time that this was approved by this Legislature for consideration of all our cities was in 1973. I would suspect that maybe every 35 years might be long enough time between that we have a reconsideration of what we're doing. One of the things that I would hope, that over the last 35 years with the material that we've supplied you as done by the Center for Disease Control and other such world-respected organizations, that this now has much more weight that we're doing the right thing than we knew 35 years ago. So really all we're doing with this is asking the cities one more time, 35 years later, to consider or reconsider their question of not fluoridating their water. More than half of the people in the state have been drinking fluoridated water for these 35 years. There is no evidence of consequence. And what we talk about later is there's no

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question. Too much fluoride is bad. They're talking four to five times the level. We're talking therapeutic levels. We may have mentioned in this body before that BOTOX, one of the most commonly used things, is actually the world's deadliest poison, the world's deadliest poison. But if you give it in the right amounts, it has the beneficial effect that people want. We're talking the same thing here. We're talking about the right levels, controlled levels of the fluoride that gives you the therapeutic effect that you desire, not the harmful effects that you get from the other way. Now in 1973, they put in the same mechanism that we're talking about today for the opt-out. The League of Municipalities recommends the same opt-out for exceeding budgets and this type of thing. It is the commonly used mechanism. And one last thing: there is no question that this is an issue that is emotional and if you want to vote for abuse of your city councils and town boards, put them in this position. You'll be remembered for a long time for the favor that you've done them. So I would ask that you reject this amendment and let's go with the same tried and true mechanism that the League of Municipalities has used in other areas where there is a cost involved. And there definitely is a cost involved to these cities. Let's let... [LB245]

SENATOR AGUILAR: One minute. [LB245]

SENATOR JOHNSON: ...the people decide. Thank you, Mr. President. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. Next up, Senator Chambers. You are recognized. [LB245]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator Johnson a question. [LB245]

SENATOR AGUILAR: Senator Johnson, would you respond to a question? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR CHAMBERS: Senator Johnson, is chlorine used to help purify water? [LB245]

SENATOR JOHNSON: Yes, it is. [LB245]

SENATOR CHAMBERS: If too much chlorine is used, can it be toxic and even fatal in some situations? [LB245]

SENATOR JOHNSON: Not only can the chlorine itself, but too much water itself if it's ingested can be toxic. [LB245]

SENATOR CHAMBERS: Thank you. I'd like to ask now Senator Hansen a question.

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[LB245]

SENATOR AGUILAR: Senator Hansen, would you respond to a question? [LB245]

SENATOR HANSEN: Yes. [LB245]

SENATOR CHAMBERS: Senator Hansen, if I were going to sing, I'd say I'm a city slicker, I'm a city slicker. I want to find out something about fertilizer. Is anhydrous ammonia used in fertilizer? [LB245]

SENATOR HANSEN: I believe so. I'm not a crop farmer so I really don't know. But it is, yes. [LB245]

SENATOR CHAMBERS: I had seen though one time where a tank containing anhydrous ammonia ruptured. And when vehicles came through it, the oxygen was gone and it stopped the motor of the vehicle. So anhydrous, properly used, can have a worthwhile and helpful purpose. But it can, in the wrong concentration, be deadly. [LB245]

SENATOR HANSEN: That stuff is very deadly, very poisonous. [LB245]

SENATOR CHAMBERS: Thank you. Members of the Legislature, and I know Senator Preister is aware of this, too much salt is bad. But I'd like to ask Senator Preister a question. I'm calling on the experts. [LB245]

SENATOR AGUILAR: Senator Preister, would you yield to a question? [LB245]

SENATOR PREISTER: I would be most happy to, especially on April Fool's Day. (Laughter) [LB245]

SENATOR CHAMBERS: Senator Preister, is too much salt consumed by a human being unhealthy? [LB245]

SENATOR PREISTER: Yes, it is. And I don't eat it at all. [LB245]

SENATOR CHAMBERS: Have you ever read of a situation where a person was in a marathon, and others have had similar situations, where they drank so much water that they diluted the amount of salt they had in their system and some of them, at least one of them actually died from having consumed too much water. Had you heard of that? [LB245]

SENATOR PREISTER: I have heard of that. [LB245]

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SENATOR CHAMBERS: Thank you. And members of the Legislature, when I was in the infantry and we were going to go on a long march, they would never let us have water straight. They always salted it. They always put salt in it because as you perspired you lost salt. So salt, as Senator Preister pointed out, taken in the wrong way or the wrong form or too much can be unhealthful. But if you don't have enough salt, that in itself becomes a problem. So in the same way that these substances require a certain balance and proper use to be of value, the issue, the policy is one that requires balancing. Senator Gay mentioned some of those ideas that will show why we ought to support this bill. It is going to be beneficial to our children. I have consumed fluoride as long as it's been in the water. Maybe if Senator...I won't call him "Lankymeier" because that...people don't need to know that's what I call him because they'll start doing it. But Senator Langemeier, had he gotten some fluoride, maybe he wouldn't have had to go through that agony of a root canal yesterday. Thinking about what he suffered, I know he wouldn't want any child to go through that or any person who is a child now who will reach adulthood. If there is a prevention of cavities, then you don't have to worry about the type of thing that Senator Langemeier went through, that other people can go through. Now I am in favor of this because... [LB245]

SENATOR AGUILAR: One minute. [LB245]

SENATOR CHAMBERS: ...after the number of years that have passed, we can say fluoride is no longer an experimental substance. It reminds me of something I saw in a movie where a British general was getting the worst of it from Rommel and one of his lieutenants asked him did he want a cup of tea. And the general said tea, what good is tea, how can that help? And the lieutenant said, sir, it may not help but it certainly can't hurt. And the general said, I'll have a cup of tea. Fluoride will not hurt. I hope we'll pass this bill and help all of the children who will benefit therefrom. Thank you, Mr. President. [LB245]

SENATOR AGUILAR: Thank you, Senator Chambers and others. Senator Langemeier, you're next and recognized. [LB245]

SENATOR LANGEMEIER: Mr. President and members of the body, the argument that we shouldn't pass this because it's putting undue burden on our city councils is ridiculous. You know, our city councils fight every day whether they should ban dogs in areas, pave streets. They make a lot of tough decisions that a lot of people aren't real happy about and that's what they run for. That's what we call local control that everybody here strives for. So to say we're not going to do that on that regard is just ridiculous. Senator Chambers, my children do take fluoride tablets so they don't go through the pain I have. My tooth problem yesterday, I can relate to a poor dentist when I was a young man is what the problem was with that, that cracked off while we were in Banking Committee talking about viatical settlements. (Laughter) And so I've been dealing with that pain ever since. And after yesterday, the viatical settlement pain

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continues. (Laughter) So with that, at this time through that discussion I would withdraw FA257. [LB245]

SENATOR AGUILAR: So ordered. Senator Burling, your light is still on. Did you wish to speak? [LB245]

SENATOR BURLING: Thank you, Mr. President. I have a question for Senator Johnson. [LB245]

SENATOR AGUILAR: Senator Johnson, would you yield to a question, please? [LB245]

SENATOR JOHNSON: Yes, sir. [LB245]

SENATOR BURLING: Thank you, Senator Johnson. This might have been stated somewhere in the debate on this bill, but if it was I missed it. So very quickly, a city that wants to put in fluoride now, what's the procedure? Is it take a vote of the people or can the governing board do it, or what? [LB245]

SENATOR JOHNSON: Going back to 1973, and let me check for that because I don't want to misspeak. They still can do it. It's the same mechanism. The people can vote it out. If the city council says they're going to go ahead and do it, a petition could be put on the ballot. Then it would go to an election and could be opted out by the election of the people. [LB245]

SENATOR BURLING: Okay. But if...the city council can, now without this bill, decide to fluoride the water? [LB245]

SENATOR JOHNSON: I believe that's correct, sir. I will double-check but I think that's correct. [LB245]

SENATOR BURLING: Okay. I understand the part about the initiative petition then could opt out. But I was wondering, how can they...if they don't fluoride the water now, how can they do it now without this bill? That was my... [LB245]

SENATOR JOHNSON: I think that really what we're trying to do with this bill, sir, is to get every municipality that doesn't have fluoride in their water to reconsider and put it in. [LB245]

SENATOR BURLING: I understand that. [LB245]

SENATOR JOHNSON: But again, if the city council moves to go ahead, buy and install the equipment and so on, it could still be stopped by the initiative process to put it on the ballot. I think I'm speaking correctly. [LB245]

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SENATOR BURLING: Okay. Thank you. Thank you, Mr. President. [LB245]

SENATOR AGUILAR: Thank you, Senator Burling and Johnson. Continuing discussion on the committee amendments. Senator Erdman. Your light is now off. Senator Erdman waives. Senator Johnson, you are recognized to close on the committee amendments. [LB245]

SENATOR JOHNSON: Thank you, Mr. President. One of the things that we really are trying to do here is just do this, and it's really very simple. After 35 years, let's challenge each of our cities and towns to consider fluoridating their water. As the years go by and we have study after study that shows that it is not only safe, it's effective, and it reduces the cost. One of the reasons that we're bringing this bill is we all complain about the high cost of Medicaid. One of the reasons that we put in the packet citing the three towns where the Mission of Mercy had been is that none of these towns fluoridated their water. They were picked deliberately by the Dental Association and that was one of the reasons. Obviously there was a very...other very important reason in all of these towns, and that is they were great towns that would help with this process so that we would really accomplish what was intended with this. I went to the one in North Platte and the cooperation of the city was marvelous. I'm sure it was the same in the other ones. Now in spite of the fact that we have these great cities, look at the shocking numbers that came out of these free dental clinics. We are failing our youth at this time in many of our cities. All we're really asking is a reconsideration of where we're going. Let's save money and get the best dental care we can. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. You've heard the closing on the committee amendments. The question is, shall the committee amendment to LB245 be adopted? All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB245]

ASSISTANT CLERK: 26 ayes, 4 nays on the adoption of committee amendments. [LB245]

SENATOR AGUILAR: The committee amendments are adopted. [LB245]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB245]

SENATOR AGUILAR: And there are no lights on. Senator Johnson, you're recognized to close on LB245. [LB245]

SENATOR JOHNSON: Mr. President, I'll be very brief. Thank you for the good discussion this morning. It has been enlightening and let's now do the right thing for our youth throughout the state and also for those of us that are a little bit older. One of the

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things that came to mind during this discussion is I am old enough that I clearly remember going to the dentist before there were any numbing substances in the teeth or gums. I will never forget that. I would suggest that there are a lot of people out there that would appreciate your help so that they don't get the dental caries and have good and healthful lives because of that. I ask for your vote. Thank you. [LB245]

SENATOR AGUILAR: Thank you, Senator Johnson. You have heard the closing on the advancement of LB245 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB245]

ASSISTANT CLERK: 29 ayes, 4 nays on the advancement of the bill, Mr. President. [LB245]

SENATOR AGUILAR: The bill does advance. Mr. Clerk. [LB245]

ASSISTANT CLERK: Mr. President, next bill, LB245A by Senator Johnson. (Read title.) [LB245A]

SENATOR AGUILAR: Senator Johnson, you are recognized to open on LB245A. [LB245A]

SENATOR JOHNSON: We have...thank you, Mr. President. We've just been given the potential fiscal note and the possible number is as much as \$45,000. But this will be corrected. Let's just bring this along with the bill at this time and the next time it comes up we will give you the more accurate numbers. So at this time I would just ask that we keep LB245A in unison with the bill itself. [LB245A]

SENATOR AGUILAR: Thank you, Senator Johnson. There are no lights on. Would you choose to close? Senator Johnson waives closing. The question before the body is, shall LB245A advance to E&R Initial? Have you all voted that care to? Record, Mr. Clerk. [LB245A]

ASSISTANT CLERK: 28 ayes, 2 nays on the advancement of the bill, Mr. President. [LB245A]

SENATOR AGUILAR: LB245A does advance. Mr. Clerk. [LB245A]

ASSISTANT CLERK: Mr. President, some items for the record. The Education Committee will be meeting in Executive Session immediately following the motion to recess this morning. That will be in Room 1023. I have an amendment to be printed from Senator Johnson to LB928A; Senator Chambers, amendments to LB853. Your Committee on Enrollment and Review reports LB1154A to Select File. New A bill, LB1116A by Senator Erdman. (Read LB1116A by title for the first time.) Name add:

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Senator Synowiecki to LB920. (Legislative Journal pages 1255-1256.) [LB928A LB853 LB1154A LB1116A LB920]

And a priority motion: Senator Flood would move to recess until 1:30 p.m.

SENATOR AGUILAR: You've heard the motion to recess until 1:30 p.m. All in favor say aye. We are recessed.

RECESS

PRESIDENT SHEEHY PRESIDING

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

CLERK: I have a quorum present, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: I have no items at this time.

PRESIDENT SHEEHY: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR282. Mr. Clerk, we will move to the first item for this afternoon's agenda. [LR282]

CLERK: Mr. President, LB846. Senator McGill, I have Enrollment & Review amendments. (ER8217, Legislative Journal page 1125.) [LB846]

PRESIDENT SHEEHY: Senator McGill. [LB846]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB846]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed nay. Amendments are adopted. [LB846]

CLERK: Mr. President, the first amendment under consideration or for consideration I should say, Senator Hudkins, AM2063. (Legislative Journal page 1110.) [LB846]

PRESIDENT SHEEHY: Senator Hudkins, you are recognized to open on AM2063 to LB846. [LB846]

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SENATOR HUDKINS: Thank you, Mr. President and members of the body. As most of you are probably aware, there were at least two gas tax proposals put before the Revenue Committee. Senator Fischer had one which has to do with the wholesale rate of gasoline and did things with the wholesale rate and also with the gasoline costs. And mine would have been a flat 3-cent increase in the gas tax, split between the counties, the cities, and the state. But my bill would have raised the motor vehicle fuel tax. Currently, the costs of building and maintaining the road and street infrastructures across the state is in need of an influx of money so that the cities, counties, and the state can keep up with the demand for improved infrastructure. The rising cost of all of the products used in these projects has been so great that the funds available for projects is reaching a low that should raise concern to the traveling public and those responsible for their safety. I would like to ask Senator Fischer a question if I may. [LB846]

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

SENATOR FISCHER: Certainly. [LB846]

SENATOR HUDKINS: Senator Fischer, do you know what day it is? [LB846]

SENATOR FISCHER: Pardon me? [LB846]

SENATOR HUDKINS: Do you know what day it is? [LB846]

SENATOR FISCHER: Oh, Senator Hudkins, this is April 1. [LB846]

SENATOR HUDKINS: April fool. Mr. President, I would like to withdraw this amendment. (Laughter) [LB846]

PRESIDENT SHEEHY: Thank you, Senator Hudkins. AM2063 is withdrawn. [LB846]

CLERK: Mr. President, the next amendment, Senator Raikes, AM2181. (Legislative Journal page 955.) [LB846]

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on AM2181. [LB846]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. Senator Hudkins is, as usual, a hard act to follow, but I would like to tell you that I think the issue she raises with her amendment is a valid one. I do and have supported Senator Fischer's bill, LB846, which restructures the funding formula. However, I do think there is an area of concern with that restructuring and that's what I would like to bring your attention to at the moment if I may. Before I go further, I have handed out to you two different pages. The first one has got a diagram on it which shows you the distribution of

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the highway monies as now required by statute. The second one is a little table that shows over the past several years how much money is spent by local governments, cities and counties, as compared to what is done by the state Department of Roads. The issue I bring to you is under the change proposed in LB846 the monies for highways available to cities and counties become uncertain. I think Senator Fischer has remarked without apology that this is a bill to provide funding for the state for its roads needs, which is certainly a laudable purpose. But certainly it is also the case that there are funding needs by cities and counties. So how do we deal with that? This is one particular proposal, AM2181 is one particular proposal for how you might do that. In particular, what this proposal would do is peg monies available for cities and counties according to what is made available to Department of Roads by the Legislature. So let me back up a little bit. Right now the Legislature determines funding available to Department of Roads. The state roads funding then is subject to that decision by the Legislature, and in addition, the state funding mechanism also has a variable gas tax. So that variable gas tax can be adjusted as time goes by to assure that the amount of money that the Legislature decided should be made available to the state department to fund the roads is, in fact, made available. Monies available to cities and counties are not subject either to a legislative decision nor is there a variable tax that can be imposed to assure that the counties receive a particular amount of funding. This proposal goes in really two directions. It proposes that cities and counties be funded at 55 percent of what is made available via legislative decision to the state Department of Roads. Okay? That is based on this little chart that you've gotten, which has shown over the last seven years the amount or the state and local roads money or, excuse me, city and county roads money available is about 55 percent of what the state roads budget is. So that amount of money to cities and counties is pegged at 55 percent. The way it works in this formula is that once the department...the first step is for the Legislature to establish a budget for the state Department of Roads. Once that happens, you take 55 percent of that and that is the amount of money that goes to the Highway Allocation Fund, which is the money that supplies cities and counties. The next step then is that should the amount of money, the estimates be other than 55 percent, then the 66/34, which is the percentage used to allocate the...in Senator Fischer's bill, LB846, that's the money used to allocate the excise tax between the state and cities, that's adjusted so that the amount of money available to the counties if 55 percent--cities and counties is 55 percent. The final step then is that if that results in a lower amount of funding than to the state Department of Roads than what the Legislature appropriated, you have the variable gas tax to make sure that that matches. So there are four simple steps. (Laughter) The essence of it is, though, that you are assuring that the amount of money available to cities and counties is the same as it has been historically, 55 percent, as compared to the state or the Legislature's funding of the state Department of Roads. It addresses then the concern that this mechanism as you establish it, leaves considerable uncertainty as to funding available for cities and counties. That's the essence of it. It is accomplished within the mechanism that Senator Fischer has proposed in her bill. You have a distribution of the excise tax between counties and

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cities versus the state and you retain the variable tax as it has been there. So the net result again is that you peg or establish the amount of money available to cities and counties at the same time you establish a funding level for Department of Roads. So with that, I will attempt to address questions or ask for your discussion. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the opening of AM2181 to LB846. The floor is open for discussion. Members requesting to speak are Senator Pirsch followed by Senator Fischer. Senator Pirsch, you are recognized. Senator Pirsch waives. Senator Fischer. [LB846]

SENATOR FISCHER: Thank you, Mr. President and members. As always, I appreciate Senator Raikes's thoughtful formulas that he brings before the body, but I would respectfully have to ask that you not support this amendment. There are several reasons why we set the percentages between the states and the local governments at two thirds and one third respectively. First of all, you need to remember that the fuel tax is a state tax. That is a tax that the state shares with the cities and counties. Currently under the gas tax as we have it now and that Senator Raikes handed out, the chart for you to look at, you see that counties receive 46.6 percent of the current fuel tax. I think you also need to realize there are formulas for the cities and counties that we currently have that determine how that is split. But we also need to be aware of the fact that there are many state highways that directly benefit our cities and towns--Dodge Street, Maple, and L Street in Omaha; O Street, Cornhusker, Highway 2 in Lincoln; Highways 281 and 30 in Grand Island; Highways 83 and 30 in North Platte; Highway 26 in Scottsbluff. Those are all main thoroughfares that carry a significant portion of that city's traffic. Almost every town in this state has a highway going through or along it, and these are paid for with the states' portion of the gas tax. However, giving a larger percentage to local governments equates to giving up the Legislature's control over the gas tax. As the bill is now, this body still has control over the increase in any gas tax through our appropriations process and also through the variable rate that we have currently and that will carry on if this bill is passed. This body would have no control over the portion that goes to cities and counties. We don't now under the bill and if we increase that the way this amendment is worded, we would be giving up a significant amount of control over the gas tax. Remember, under LB846 the Legislature still sets the budget for the Department of Roads through the appropriations process. That determines in part what the gas tax will be at the pump for consumers. I think we need to keep that in mind, and I do thank Senator Raikes for opening up this discussion, but I would have to oppose his amendment. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Are there other members requesting to speak? Seeing none, Senator Raikes, you're recognized to close on AM2181. [LB846]

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SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I have been informed by the Speaker of a moratorium on me for formula revisions from here on out so I hereby withdraw this amendment. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Raikes. AM2181 is withdrawn. (Visitors introduced.) We will now return to...Mr. Clerk. [LB846]

CLERK: Mr. President, the second amendment to the bill, Senator Raikes, AM1967. (Legislative Journal page 956.) [LB846]

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on AM1967. [LB846]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. AM1967 would eliminate the provision in current statute that allows a truck to exceed its maximum weight by up to 15 percent for a distance of up to 70 miles to transport grain or seasonally harvested products from field of storage, market, or stockpile in the field or from stockpile to market or processing plant. No permit is necessary to take advantage of this provision. The only requirement is if the owner of the agricultural product or representative of the owner must furnish the driver of a loaded vehicle with a signed statement of the origin and destination of the product. This policy was put in place in 2000 to spare farmers from the burden of having to obtain a permit to exceed the weight limit. Should this amendment take effect, drivers hauling grain and seasonally harvested products would need to obtain a permit to exceed the weight limit. Now I will tell you that it is more my intent here to raise the issue than to propose this specific resolution of the issue. And it is, in my opinion, I think an appropriate time to rethink this particular provision. Research indicates that damage to roadways rises exponentially with increases in axle weight. For example, adding 15 percent extra weight to a 34,000 pound tandem-axle truck results in a 75 percent increase in damage to the roadway. At a time when road funds are in short supply, it makes little sense to allow farm trucks to operate up to 15 percent over the weight limit with very limited accountability. As long as the driver is equipped with a written statement from the product owner, that truck can travel wherever it should go for as far as required during the harvest season. There's no way for the State Patrol to verify the vehicle's true origin or destination. My point is this is an aberration in our policy regarding overweight trucks. Certainly the information about damage to the roadways, actually I learned about this in investigating this, is somewhat surprising. That's a big impact on roads. The second thing is an equity consideration. Why is it that someone hauling freight or someone hauling cattle or someone hauling some other commodity is required to stay within the weight limits where someone hauling grain is not? I raise this issue. If someone would like to comment on it, I will stop right here. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening on AM1967 to LB846. The floor is open for discussion. Members requesting to speak:

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Senator Fischer, followed by Senator Gay, Senator Stuthman, and Senator Burling. Senator Fischer, you're recognized. [LB846]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Once again, with all due respect, I am opposed to this amendment to the bill. Senator Raikes has brought this up before, and I know it is a concern of his. It is a concern for all of us, but we have been looking into this. The Department of Roads designs roads for traffic that they anticipate 40 years down the road. They're building roads to manage more weight, more congestion. Also we see this phenomenon happen only during the harvest season. As Senator Raikes said, it's usually within 60 miles of a farm where this is happening. It is an amendment that we need to discuss. It's an issue that we need to discuss, but I just don't feel it's proper to have it adopted to this bill so I am opposed to it. Thank you, Mr. President. [LB846]

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

SENATOR GAY: Thank you, Mr. President. On this amendment I would agree with Senator Fischer. Really I'm rising to speak on the prior amendment that was just withdrawn quickly. I thought it was worthy of discussion. I was fooled as well as anybody I guess on that because I did think it was a serious issue how counties, cities, what they're going to get. Senator Fischer did a good job explaining her reasoning behind that, why she felt it was important. But what I wanted to bring up was the fact of maybe that we could look at into the future--now is probably not the time it looks like--but as Senator Fischer mentioned, many times the primary road goes through a community and then who maintains that road would be the state, which goes into our roads, just the maintenance effort and some of those things. Along the way what I was looking at, and maybe I'm wrong, but I'm going to...if Senator Fischer would yield to a question or two. [LB846]

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

SENATOR FISCHER: Yes. [LB846]

SENATOR GAY: Senator Fischer, I agree many times it's a state road or a state byway that goes through a community. That's their lifeblood and the state maintains it. In some of the communities, though, you had mentioned Maple and in Papillion it would be 84th Street, which is I forget the highway, but the cities could probably maintain that. Is there agreements that go back and forth between the cities, counties and say, hey, if we would maintain a portion of this road and take some control over it we would get more dollars? Because I am a little bit concerned about how we are allocating. And your example, that's fine. There's differences of opinion on that. But is there any way that if in the future if a city or a county wants to maintain a stretch of road, they're already there

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maintaining roads, that they could get some credits or some more dollars down the road? [LB846]

SENATOR FISCHER: I don't know if that system currently exists, Senator Gay. I do know that the Department of Roads is never anxious to take over a county road in my area for any maintenance. That is not their policy and they have not been forthcoming in doing that. But I would think in the case you're talking about, which is the reverse, that a county or a city would be willing to take over that maintenance, that is certainly something we could look into and look into how the funding on that would take place. [LB846]

SENATOR GAY: Okay, thank you, Senator Fischer. Senator Fischer, was there an interim study turned in at all that would study some of these issues this summer? [LB846]

SENATOR FISCHER: I have submitted two interim studies basically dealing with roads. One is on how are the priorities set, who sets them, who's responsible, who makes the decision? The other interim study I turned in is dealing with expressways and where we are at really on prioritizing and deciding where expressways are built in this state. [LB846]

SENATOR GAY: Okay. And those are both good interim studies, appreciate you doing that. But I guess prior...I didn't hit my light on that prior amendment. I was kind of waiting to see who else was going to speak and listen a little bit more than talk. But I think it is an important issue that was brought up and something in the future we better pay attention to. I'm a little bit concerned that the way we changed the funding we will never go back again to the counties, the cities and change that percent. So we need to look at options, I think, in the future, whether it's this summer or anytime, but I guess there are opportunities. The city of Papillion I know would probably be more than happy to take over certain areas where the state is now maintaining or the county in some of the more urban areas because we've already got trucks there doing things. And I think they can't do it for free obviously. But efficiencywise maybe if they are there anyway and they're doing snow removal maintenance, filling potholes, doing whatever they're doing, they'll say, hey, we will do this. But there has to be some kind of reward to do that... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR GAY: ...so or some kind of incentive. So maybe down the road as we look at these things in the summer that could be something to look into and find out the most efficient way for maintenance and some of those things. So if they pick up more lane miles, let's say, they might get more road dollars in a formula. So I wanted to make that point and thank you, Mr. President. [LB846]

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

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I rise in opposition to Senator Raikes's amendment, and I will give you some of the reasons why I do not support this. I feel that this additional weight that was allowed to be added to trucks at harvesttime when they're hauling their product from the field to the marketplace, you know, allowed them to be 15 percent over. And I think the reason for this at that time was because when you're loading in the field at harvesttime, moistures are different and there was no scale where you were loading and you filled the truck, the semi up it was about so many bushels, there's a lot of difference between 17, 18 moisture grain and 28 moisture grain or 22 moisture grain. There's a lot of difference in that about how much the...your semi, your grain trailer is filled up to a certain point. And I think this is the reason that it was put in place at that time. I am concerned about one thing, though, also and we don't address that at all. We do have at the present time we have farm equipment, grain carts on a four-wheel drive tractor with eight wheels on the tractor, two wheels on the grain cart. These grain carts hold up to 1,200 bushels, which is about 65,000 pounds on those two wheels, and they're balanced. They're manufactured to a point where there's very little weight on the drawbars part of it because they're balanced if they're filled to capacity. You have these two wheels going down the road with, you know, 65,000 pounds on. I think those do a lot more damage to the roads. Yes, they're on dirt roads, but a lot of them go down oil mats, they go down highways, they're just used a lot in the farming community. But there's no regulations on that. And I don't know if there should be. But if we're concerned about, you know, the 15 percent overage on the trucks, which is something that we do not realize how much moisture is in the grain, we don't know exactly how many pounds we have on because we have not had the opportunity to weigh it. There are a lot of people now have, you know, the grain carts have a scale on. They can load it fairly close to what you think the capacity of the truck is so you're legal. I do know some people, you know, run it up to the limit on that 15 percent extra to get more bushels in. I just think that we shouldn't be messing with it at the present time. I think we should be looking a little bit more serious at, you know, the overall, you know, the road structure capacity, the weights of other things also on the road. I do not support this, and I think we should maybe look at something else to address instead of penalizing the individual farmers that do not have scale systems when they're hauling the grain into the market. A lot of people load into a bin and then they load out of a bin and haul it to market. They do not have a scale. They do not have to have the scale at their farm or location that holds, you know, enough capacity to weigh a load. So I do not support this amendment, and I will be voting against this. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Burling, followed by Senator Wallman. Senator Burling, you're recognized. [LB846]

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SENATOR BURLING: Thank you, Mr. President, members of the body. Just to kind of build on what Senator Stuthman said, Senator Raikes asked for some discussion, and I agree with what Senator Stuthman has said. I want to add one more thing. You can tell by looking at corn, for instance, if it's wet. And Senator Stuthman addressed the moisture in the corn. You can tell by looking at if it's wet, how high it stands up. But what gets me is when the test weight changes. You can't tell by looking at corn when the test weight changes. So if you're out picking corn in a field and you've been out loading your trucks with 56-pound corn and you've been legal and you switch numbers right in that same field and it goes to 60-pound corn, all of a sudden you're way overweight. And so that's just another reason for this allowance, and I wanted to bring that out. Thank you. [LB846]

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

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I actually agree with Senator Raikes--April fool. I appreciate what Senator Stuthman said and, you know, the high price of fuel and everything nowadays and we're going to pinch things down, I think most trucks will be pretty full and they may be overweight. And in the summertime and in the fall, I don't think that hurts the highways so much, but maybe in the spring when the roads are wet so I will be against this amendment. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Chambers, you're recognized. [LB846]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I would like to ask Senator Louden a question if he's here. [LB846]

PRESIDENT SHEEHY: Senator Louden, would you yield to a question from Senator Chambers? [LB846]

SENATOR LOUDEN: Yes, I would. [LB846]

SENATOR CHAMBERS: Senator Louden, you have a bill coming up this afternoon, if we get to it, dealing with those rural isolated...what is the terminology for your bill on those roads that can be... [LB846]

SENATOR LOUDEN: Rural residential, is that what you're speaking of? [LB846]

SENATOR CHAMBERS: Yes--rural residential isolated roads. And to show how much I think of the information Senator Louden gives us, I kept a picture that he gave us that shows four examples. These roads are pitted. They have what could be called potholes

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I guess. And Senator Louden's bill, if I understand it correctly, would allow a certain type of surfacing on those roads. Is that true or false, Senator Louden? [LB846]

SENATOR LOUDEN: That's true. We could use some crushed rock or gravel to use them, and we wouldn't have to have a 26-foot-wide base. [LB846]

SENATOR CHAMBERS: Crushed rock or gravel, thank you, Senator Louden. Members of the Legislature, what Senator Raikes is trying to alert you to is the fact that roads which currently look smooth and almost pristine may very well look like these four examples that Senator Louden gave us. Now if heavy trucks, overweight trucks damage the road, what difference does it make whether I who am driving the truck may have a scale to tell me that? What difference does it make if the products that I'm carrying or the commodities are wet or dry? The roads do not know that. They are not going to gain more strength, be more resistant because a farmer is driving an overweight truck because he has some corn in it which is wet. The damage will be done. The damage will have to be repaired. Repairs fall into the category of maintenance. What you all want to allow is the very type of thing which helps encourage me to be against any additional road building because you all want to keep in place practices that damage the roads and require more maintenance which requires more money. So when you talk about the need for additional money to the roads department to do their job, on the left hand you're saying take care of the roads; on the right hand you're saying to Hades with the roads. Let them be damaged. Now am I sympathetic to those who make their life or their living through agriculture? Yes. But there are other people who make their living carrying various items with trucks. My view...Patrick Henry could have said instead of Give me liberty or give me death, he could have said, Freedom for everybody or freedom for nobody. That's a mantra for black people. Overweight trucks for everybody or overweight trucks for nobody. There are too many times we deal with too many issues where we want to talk about a disparity in treatment and how inappropriate that is. That there is no basis for favoring one over the other except that you're more sympathetic to one than you are to the other. When you remove the sympathy... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR CHAMBERS: ...and get right down to the basics of the conduct that we're looking at or the evil that we're trying to prevent, there is no difference and they deserve to be treated the same way. Suppose during construction season it's necessary to carry a lot of metal, stone, wood, prefab items that would make the truck overweight. I know my time is up. I'll put my light on again. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Fischer, you're recognized. [LB846]

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SENATOR FISCHER: Thank you, Mr. President and members of the body. Senator Raikes and I were having a discussion back here so I would yield my time to him. [LB846]

PRESIDENT SHEEHY: Senator Raikes, you're yielded 4 minutes, 50 seconds. [LB846]

SENATOR RAIKES: Thank you, Mr. President and thank you, Senator Fischer. I appreciate the discussion on this. This is kind of a continuation of the unicycle truck discussion that we had here a year or two ago. I do think it is an issue that needs to be addressed, but I will take Senator Fischer's word that this is something that will be addressed. And with that, I withdraw the amendment. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Raikes. AM1967 is withdrawn. Next amendment, Mr. Clerk. [LB846]

CLERK: Mr. President, Senator Erdman would move to amend, AM2602. (Legislative Journal page 1237.) [LB846]

PRESIDENT SHEEHY: Senator Erdman, you're recognized to open on AM2602 to LB846. [LB846]

SENATOR ERDMAN: Mr. President, I was thinking that this would be a compromise amendment, but I won't try the same trick I tried on the budget. I was chastised for attempting that of asking for unanimous consent so I won't do that, although it would move the agenda along, I think, Mr. Speaker. He agrees. Maybe I should try it. AM2602 provides the exact same dollar amount for this biennium for roads funding that is in Senator Fischer's bill and the budget without raising the gas tax. Hold your applause, please. That's the sense I thought we were going to do. We're going to raise the gas tax. Go for it. But as the accommodating member of the Legislature that I am, I want to give you another opportunity not to do that. Senator Fischer's cousin is here in one of the student senator programs that I put on and we were having a conversation over lunch hour about what his cousin is doing. And his cousin thinks that Senator Fischer is lowering the gas tax. We had to have a brief conversation about what Senator Fischer is actually doing, but we're going to remove those conversations, and I'll explain to you what this amendment does. And I am taking somewhat of a lighthearted approach to this because I think you've either made up your mind that you're going to take more money out of the pockets of Nebraskans and raise the gas tax or you've decided you're not going to do that and we'll see where we end up. We know that there's a budget bill that's sitting before the Governor who has until midnight Thursday to tell us what he's going to veto out of that budget. I'm not a betting man, I never have been, hopefully never will be. But I think the odds are in favor of a veto on the gas tax increase. AM2602 adopts a similar process that we already use in the budgeting system in the state of Nebraska to supplement our roads funding. Right now in the state of Nebraska every

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year we pass a budget, we set aside 3 percent of those obligations in the minimum reserve. And if you look on the financial status sheet on the back of your agenda, on line 31 it shows that the minimum reserve amount for this biennial budget for '08-09 is ending at \$209 million, which means we're \$61 million short of that 3 percent reserve. I don't have a fancy formula or a creative solution or any derivatives to offer you other than if you understand how the minimum reserve works you'll be able to understand how this amendment works. And here's how it goes. When we set our budget, we set aside 1 percent of the express authorization, excuse me, 1 percent of the appropriations in express obligations of the state to the Highway Trust Fund. That number generally reflects the amount that Senator Fischer is trying to raise in the gas tax. It's a little lower, but it's generally the same. So when we go through the budgeting process next year, if this amendment gets adopted, this bill becomes law, the Governor signs it, which I'm sure he'll veto this as much as he'll veto the gas tax increase, because the Governor has said he doesn't want any new funding for roads this year, if this becomes law, the process would be that the Appropriations Committee, when setting the budget, would fill in or would set aside the same...in the same way they would set aside the money for the minimum reserve they would set aside the money for this Highway Trust Fund. One percent of that amount is not hard to figure out. You can look at our budget. Next year it's scheduled to be \$3.8 billion plus \$4 billion, you're just south of \$8 billion, 1 percent of that amount is \$80 million divided by 2 is \$40 million. That's how you do it. Senator Fischer's bill does something with the fixed tax. And I'll be candid with you: AM2602 guts her bill. It strikes everything that's in her bill. So the fixed tax stays at 10.5 cents; the variable tax is still set by the Legislature; the percentages in my amendment are exactly the same percentage allocation that she has in her underlying bill because she chastised Senator Raikes and others that that wasn't the right approach. So noted. Again, this reflects a different way of accomplishing the exact same thing Senator Fischer wants to do. The source of the funds, however, is General Funds. Whether you take it out of the Cash Reserve, whether you take it out of the General Fund directly, it is a General Fund appropriation of the state. One of the things that makes this different than other concerns that people have said about general funding roads is, well, the Legislature can zero that out in any given year. This becomes a statutory requirement just as our minimum reserve does. In order for somebody to not fund, in order for the Legislature to not fund my amendment, they have to go in and repeal this law. Just as if the Legislature wanted to not fund the 3 percent minimum reserve, they would have to go in and amend the section of law that was put in place when the state used to levy a property tax, which has now become the section of law that we utilize for the minimum reserve. It is an obligation of the state that is ongoing and I would argue more stable than what Senator Fischer is proposing. And the reason is, is that if we don't pass the A bill on Senator Fischer's bill, you don't get the money. You don't get the new money. So it's not very creative, it's just looking at how we do business in other areas. The 10.5 cent stays the same; the variable tax stays where it is; and the Legislature will determine that as they would under Senator Fischer's bill. It's an opportunity for us to provide additional funding for roads without raising the gas tax and providing a stable

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process for that to occur. I've got a sheet, I don't know if you all have this sheet, I've got a sheet that shows the different options that happen if the budget passes or if the bill in front of us passes without the A bill or if the bill and the A bill and the budget all become law. Right now the citizens of the state of Nebraska are paying 23 cents per gallon for taxes on fuel. In July, that number is going to go to 25.3. If all of these bills pass, by January 1 the citizens of the state of Nebraska are going to be paying nearly 30 cents a gallon. So that's a potential 7 cent increase in taxes over what you're currently paying. Now some of those are already built into the budget; 2.3 percent of that increase was already in the budget that was passed last year and was approved by the Legislature. That's already in process. So what I offer you today is a \$40.3 million revenue source that will grow with the growth of state government, with the state budget, in providing stable, long-term funding to complement the existing taxes that we have on roads. That's all it does. It's a simple amendment. Senator Fischer I'm sure is ready and excited to step forward and say that she supports it with her whole heart, and then she'll probably say that it's April 1 so you know what that means. But it's a different way of solving the problem. It's the fourth time that you've been given this session of funding roads without raising the gas tax. I don't know how many more times I can come up with ideas. My sense is that this is the last one. I hope you get the opportunity to give serious consideration to this. One technical thing that you need to be aware of: In the last part of this amendment it provides the \$14.5 million to the Department of Roads that's in the budget. It also provides the \$16.1 million, excuse me, the \$14.5 million to the Highway Cash Fund, which ends up in the Roads operations funds for salaries. That's already in the budget. If you adopt my amendment, you don't have to vote to override the Governor's veto of the gas tax increase. The second part of the amendment, the last part of the page, would appropriate... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: ...the \$16.102 million to the Highway Cash Fund, or excuse me, to the Highway Trust Fund as Senator Fischer's bill would. So it does two things. It doesn't just fund what LB846 would. It also provides you another opportunity to have a fallback position in the event that the Governor vetoes...line-item vetoes out the gas tax increase in the budget. It gives us the opportunity to still provide funding to the Department of Roads so that way we don't cut funding for roads to pay for salaries. I've probably destroyed that explanation of it, but I will be available to try to answer any questions you have and be willing to visit with you about the practical application of this amendment. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You've heard the opening of AM2602 to LB846. (Visitors introduced.) We will now move to floor discussion on AM2602. Members requesting to speak: Senator Fischer, followed by Senator Heidemann, Senator Pirsch, Senator Gay, and Senator Erdman. Senator Fischer, you're recognized. [LB846]

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SENATOR FISCHER: Thank you, Mr. President and members. I'm sorry to say that once again I'm rising in opposition to an amendment that's been filed on LB846. I do appreciate Senator Erdman's thoughtfulness in looking for solutions that he feels he can better live with the bill than. I think our difference boils down to a difference in philosophy on this bill and on how we fund roads. I believe that the people who use the roads should be the ones who pay for the roads. Therefore, yes, I support a tax on fuel. That's the way we have done it in Nebraska since the 1920s. That's the way I believe we should continue to fund our roads at the state level, at the county level, and at the city level. I do not support taking General Fund money. I do not support using the Cash Reserve. Where does that money come from, General Fund money? That's tax money. It comes from sales tax. It comes from income tax. That's how we run the state. We tax people on their income and we have a sales tax. So if we're going to use General Fund money for roads, we are using the tax money of all individuals in the state who buy anything that has a sales tax on it or who files an income tax return whether they use the roads or not, whether they have a car or not. They may only take public transportation. They may have no transportation. But we are using their tax money to pay for roads. I don't believe that's appropriate. I believe that the people who use the roads pay for the roads, whether it's through a fuel tax, whether it is through motor vehicle registration, or whether it is by the sales tax on their motor vehicles. That is where I come from. I think I've made that very plain to all of you over the summer when we worked on this, when I met with you and gave you a report of the study that we had done on what other states do, I think we made it very clear at that point. I do stand firm on that. That's a belief that I have. I don't believe it's fair to use sales tax. I don't believe it's fair to use income tax from people who do not use the roads to build the roads. There are other demands on the General Fund, and I happen to believe in the future we need to be conservative because we will see demands on the Cash Reserve. Those are the reasons that I oppose this amendment and that I have opposed Senator Erdman's amendments to this effect in the past. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Heidemann, you're recognized. [LB846]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. Just real briefly, probably somewhat repeating what Senator Fischer has said, it was looked into about how we could change, how we could get different funding for the roads. We talked about a lot of things and about what a lot of other states did to try to help out their roads funding problems. And all the states surrounding us and probably throughout the nation are facing the same problem that we are. And we talked about bonding, and there are states around us that bond and have got themselves into trouble. And we talked about toll roads which didn't seem to work for Nebraska. We talked about General Funds. And we didn't think that was the best place to go, and there was a lot of people that told us that they didn't think that was the best place to go. And with that, I

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will get off of that. But I do want to alert you to the fact that if we do this and if you look at your green sheet on the financial status on line 32, you will see a \$61 million shortfall this year as it stands right now. This bill actually wouldn't affect that because he takes Cash Reserve money to do the '08-09 year. What you have to look about on line 32, if you keep following it across, it shows a \$382 million shortfall. If we would adopt this amendment, that \$382 million would grow to I think it's \$460 million imbalance. What Senator Erdman is saying...is proposing right now, you know, during some good times maybe like last year this wouldn't affect, it wouldn't hurt us quite as much. But there are years coming up that if we would adopt this amendment that you're looking at, you know, approximately \$80 million during the biennium budget. That money is going to have to come from someplace. During a shortfall, you're either going...because of that extra \$80 million obligation, you're going to have to cut other programs or you're going to have to raise taxes. There's just no other way to do that. So with this amendment there will be consequences, and I want you to be aware of that. I do oppose this amendment. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Pirsch, you're recognized. [LB846]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I wonder if Senator Erdman might... [LB846]

PRESIDENT SHEEHY: Senator Erdman, would you yield to questions from Senator Pirsch? [LB846]

SENATOR PIRSCH: Oh, there you are. [LB846]

SENATOR ERDMAN: I will. [LB846]

SENATOR PIRSCH: Actually, I'll try to make this brief. Just one question in particular. Could you explain again the feature you said even in the event that there was a veto by the Governor of the contents, the underlying contents of the amendment that there would be an alternative funding source encapsulated in your amendment. Is that correct? Could you explain that again. [LB846]

SENATOR ERDMAN: Yeah, and I will. And as I said in my opening, I probably was all over the place. AM2602 does two things. It provides the increase in funding that Senator Fischer's bill would provide by the gas tax increase, not because of the bill, but because of the A bill. Then it also provides the \$14.5 million that was in the budget to again come from the Cash Reserve as I had offered on the budget. So there are two funding components to this amendment. One, it funds the gas tax increase that's in the budget out of the Cash Reserve so that we don't have to override the Governor's veto that's going to happen when he vetoes that 1.2 cents out. And secondly, we can still

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provide the additional funding this biennium that Senator Fischer's bill would provide and long term we set up a mechanism for that same or nearly the same amount of money to continue to happen. So there's the \$14.503 million in this amendment transferred from the Cash Reserve to the Highway Trust Fund for the purposes of meeting that obligation that we know that the Governor is going to veto out of the budget. [LB846]

SENATOR PIRSCH: Okay. And so that... [LB846]

SENATOR ERDMAN: Excuse me, the Roads Operations Cash Fund, not the Highway Trust Fund. That \$14.5 that goes to the roads operations cash fund. [LB846]

SENATOR PIRSCH: Okay, dedicated funding then for the roads on an ongoing basis. [LB846]

SENATOR ERDMAN: Correct. [LB846]

SENATOR PIRSCH: Okay. And that could take place then or as you've envisioned it here without having an immediate...this gas tax occur. Correct? [LB846]

SENATOR ERDMAN: The Legislature's...the way that the Legislature currently funds the gas tax would continue. The Legislature can always raise the gas tax by utilizing the variable tax portion of that by setting the budget for the Department of Roads higher than what it currently is. So however we're funding roads now continues to happen. This is a replacement of the new money that Senator Fischer would offer. Hers comes from raising the gas tax; mine comes from money that we already have in the bank and would be a part of our appropriations process going forward. [LB846]

SENATOR PIRSCH: Very good. I appreciate the thoughtful comments made by both sides of the amendment and the bill. Thus far I haven't had the privilege of serving on the Transportation Committee and some of the...been there at the time that some of these conversations have come out earlier. So I appreciate these type of background comments by Senator Fischer and other senators on that committee. I think as I look at it, Senator Erdman's amendment, AM2602 to the underlying bill, the approach is a recognition that infrastructure is a priority. We do have a duty to adequately fund our roads to ensure that economic development does continue to occur in Nebraska, economic development that will float all boats, so to speak, in the state. I think there's a general agreed-upon recognition of that in this body, just different approaches as to how to get to that...how to make sure that the roads are funded. And so, you know, I think that we're closer as a body than I think some people think. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

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SENATOR PIRSCH: And I do concur that it is a vital need to so many communities in Nebraska. I think it's true, as Senator Erdman stated, that the Governor has stated, you know, now is not the time for a gas tax in light of the run up in gas and in light of the economic conditions of the state as far as the taxpayers are concerned. And so I think the veto is a pretty certain thing. So looking at long-term funding source alternatives I think for me is something we should be doing. And I do like...this amendment does appeal to me and so I do support it--an alternative way to raise these needed funds for roads without the gas tax at this point in time. And as he pointed out, we've had a 7 percent increase in recent years. And so I think... [LB846]

PRESIDENT SHEEHY: Time, Senator. [LB846]

SENATOR PIRSCH: Thank you very much. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Gay, you are recognized. [LB846]

SENATOR GAY: Thank you, Mr. President. I rise just to talk about this amendment a little bit. It probably doesn't have much of a chance to pass, but I appreciate Senator Erdman bringing it to the floor for discussion. You know, I guess the way I look at this, maybe this isn't that bad of an idea to get more of a commitment, fixed commitment from the General Fund of something that's maybe not as political and rises and falls. This is a tough vote for everybody in this body. And I commend Senator Fischer for taking time and coming with the bill. And here we have a bill...I just rose last time and, you know, I talked about the counties and the cities just...we just overlooked that just now and there you go, changed a formula for them for probably a long time until we come back. Motor vehicle...the fuel taxes make up 63 percent, if I'm looking at the State Highway Trust Fund, 63 percent of the funds. Those people in the urban areas are paying a large portion because there's more people using more vehicles, more fuel. So now we just reallocated that and more of this will go into the state coffers, which I hope, and that's why I asked Senator Fischer earlier, do you have a prioritization and do you have a...are you going to look at this this summer? And I know she will, I'm confident she will. However, some of these changes that are being made are just very quickly being made. This amendment, like I say, it goes and the way I understand it's going to guarantee us some income stream. But we got to bite the bullet and take it from the General Fund ongoing, and Senator Erdman can explain it again if I misstated that, which I'm sure I did. But the idea that we look at something that's a little different--Senator Fischer said I cannot get away from the fuel tax because we've done it that way for a long time--that's a hard concept and we want to make those people that are using the roads pay for the roads so I do agree mainly with her. However, I do think we need to look into the future, and it's not going to happen this year, of something that expands this out a little. There are still--and we're going to talk about revenues--there's other revenues here. Investment earnings that we have in the trust fund are down, of

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course, because the rates are down. Motor vehicle sales taxes, registrations, those make up some of the funding as well so there are other ways to look here. But, like I say, as we look at that the way we're changing this it's more important now than ever that we're going to prioritize where these funds are going because we just changed the formula of how those funds will be allocated it looks like for the future here. So I'm not going to refile that amendment because it's not going to go anywhere. But I would ask Senator Erdman if he'd yield to a question. [LB846]

PRESIDENT SHEEHY: Senator Erdman, would you yield to a question from Senator Gay? [LB846]

SENATOR ERDMAN: I will. [LB846]

SENATOR GAY: Thank you, Senator Erdman. I probably shouldn't label your amendment like that, but I know you've tried to...on the first page of your amendment, 5 percent goes to the counties and 5 percent to the municipalities under your amendment. How did you arrive at that figure or why 5 percent when? [LB846]

SENATOR ERDMAN: Yeah. Senator Gay, if you look at the way Senator Fischer's bill works, she creates \$143.7 million of revenue from gas tax. She offsets that by \$97 million reduction on the fixed tax. So the difference is \$45.8 million. My amendment simply reflects of that portion, that minus \$40.3 million, so it's about the same amount, that's what that percentage is where it ends up. So if you were going to take apples and apples, if I were going to come up with \$143 million and appropriate that whole amount, it would be her amendment the way that that's broken down. But because we're only dealing with that \$40 million, it's the same number. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: So it's and it's...I've got my light on and I can explain it. But what we're talking about is instead of appropriating the entire fund, which she is doing, 66 percent, 33 percent, we're only dealing with the new money, which is only \$40 million. Of that \$40 million under her proposal, it's about \$40 million that goes to Department of Roads--mine is about \$36.5 million. Cities and counties under my amendment get \$4.32 million; under her bill it gets \$3 million, then the total is about the same. So it's designed to be the same percentages or proportions under hers. We're just dealing with a smaller amount of money and that's why the numbers look differently. [LB846]

SENATOR GAY: All right. Thank you, Senator Erdman. You said you did have your light hit if you're going to explain more of your proposal. But I guess you're saying this comes from the Cash Reserve. That again is not so crazy either because I know several people, me included, put \$50 million from the Cash Reserve to go expressly into the expressway system. So I don't think it's that far-fetched of an idea. [LB846]

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PRESIDENT SHEEHY: Time, Senator. [LB846]

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

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

SENATOR ERDMAN: Just to follow up on the conversation with Senator Gay, Mr. President. Again, when we're talking about the fund, under the state of Nebraska you have the Department of Roads budget. And I believe that that's somewhere around \$370 million under the budget. Currently that amount is \$355 million. So if you look on the handout that Senator Raikes I believe passed out on the right-hand column it says Department of Roads and it shows the different breakdowns. That portion is the total amount. So when you get into this, even though it's worded differently, it accomplishes the same goal because 66 percent of that total would be the same equivalent of adding the additional 90 percent or \$36 million from my amendment. So it's a matter of accounting, if you will, but it accomplishes the same goal. And I will...I'll have this sheet distributed so that you can see how that is done and what the differences are between my amendment and Senator Fischer's. One of the things that you have to remember, and this I don't know has probably been brought up directly, but the price of fuel, the cost of transportation is what is driving the consumer cost for a majority of the items that they are purchasing now. Everybody wants to complain that, you know, the ag products are going up, the price of wheat is now \$10; the price of corn is now \$5. That amount only accounts for 4 percent of the growth--4 percent. So when you go to the store and you're buying beef at a higher price or you're buying boxed goods, whatever they are, or you're buying commodities that are processed, the cost of growth over what it was prior only 4 percent of that is attributed to the actual cost from the agricultural end of it. Ninety-six percent of it is everything else. And a majority of that is the cost of fuel. So here's what you're telling me, and I'm not trying to undermine the arguments. I think they're legitimate. We need to fund roads through fees, through user fees. Under my amendment, we do it the way that we're doing it now. We supplement it. And the reason why I think that supplement is important is that even if, even if you're not buying gas, you're paying the gas tax now. Now you say, well, that's not true because we only...okay, look. The total cost of gas, if we contribute to that, we're passing that directly on to the consumers. The price of diesel is \$4 a gallon. Those trucks driving up and down the interstate are driving on diesel. Where do you think that cost gets transferred to? It's a fuel excise or surcharge on their distribution which gets passed along to the retailer which the retailer passes on to the consumer. And so if you're going to argue, well, we need user fees to pay for roads, that's all fine and good assuming that those don't end up costing the taxpayer who doesn't use roads. It's happening now. It's happening now. And it's because of the influence of our poor, or lack thereof, of domestic supply of petroleum, our ability to secure sufficient resources for our economy

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to continue to grow on the side of energy. And when you go through that process, you can't honestly stand on the floor and say by passing a gas tax increase it's not targeting those people who don't drive. It already is. And depending upon what products they buy, we may also be collecting sales tax on that. So not only are we getting the cost that's passed on to the consumer from the surcharges in the increase in fuel that's transporting those items, but then they're also paying taxes on top of that. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: Everyone benefits from roads. They absolutely do. Those people that use public transportation, what are they using public transportation on? I'll give you a hint--roads. Now you may say, well, they're not paying any taxes anyways. Fair enough. But the funds for roads are an essential part of the government. They're one of the primary things that we as a state or any governmental entity should do. They're infrastructure. If we can't figure out a way to fund them that is meaningful without increasing the burden on our taxpayers who use the fuel or on the consumers who are the result of the increased costs in gas, they why do we fund anything? Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Pankonin, followed by Senator Johnson, Senator Raikes and Senator Erdman. Senator Pankonin, you're recognized. [LB846]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. When we had this discussion on LB846 on the first round, you may remember I said I had a dilemma on this bill. My dilemma was that my area south of Omaha and east of here is a growing area and has a lot of road needs. So the needs are great and I think the traffic counts are there that our area would benefit from additional road funding. On the other hand, I've got more commuters that commute over 20 miles than any legislative district, I think, in the state. And I voted against that bill because with fuel at record highs, I just thought it was not the time to tax gasoline and fuel products any more. And I've heard from those commuters and they've verified that that is the correct thinking, in my opinion. This amendment, I think, is a serious amendment. I think we should take it seriously because this one is a potential win-win for us. It does give the road funding that we need that our state demands for future economic growth, and yet it doesn't put it right at this time on fuel taxes. And we're talking about taking it out of our reserve, our state savings account, and Senator Fischer has said that's been built by income and sales tax primarily, and I would agree. But as Senator Erdman just said, to make the assertion that those people if you didn't have a vehicle, if you lived somewhere and didn't have a vehicle, you would still depend on the roads to deliver your food, your medical care, just about any service you can think of without roads and without some vehicle moving on the roads. You know, if you don't have a vehicle or whatever to make that assertion that you don't depend on that is...I think is false. I think we think about it. If you think about

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that situation, you would hopefully agree. There's another assertion here that I think has been important, and this one I may be embarrassed on by the time you roll around a year. My assertion has been through this session that agriculture...the agricultural economy in this state is so strong at the present time that it's going to help carry us through an economic downturn. And there was an article in the Journal Star today and it's entitled "Farm income boosts Midwest economy" and it's by the Associated Press dated today: The economic outlook for the Midwest and Plains region improved in March as farm income remained strong and the region experienced fewer problems in the housing market than the rest of the nation. The monthly survey of supply managers and business leaders in nine states showed the overall economic index climbing to 54.3 in March from February's 49.5, an index greater than 50 indicating an expanding economy over the next three to six months. Colleagues, I believe that this economic situation we're in with agriculture is going to drive our economy well enough that our reserve situation is not in a dire situation. I think we very well could do this bill and see our reserve hold in and be very adequate for our future needs. And I know, as Senator Harms has said, we've got future needs that are going to be demanding. But I think our economy can respond. And economic development due to roads spending is important as well. So I think this amendment deserves serious consideration. I'm going to vote for it. I think it's a win-win for my commuters and the needs that we have in our area, and I hope you give it serious consideration. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Johnson, you're recognized. [LB846]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. I don't really know where to begin here because what I see, and I stand against the amendment and for Senator Fischer's original bill, I find it almost amusing that we are blaming our problems on a gas tax which has gone down 4 cents since the first of January. That isn't the problem. The problem is that over the past several years we have gotten into a situation nationally where we really aren't a whole lot different than Japan and Germany were in the late thirties. We are an industrialized country that now is dependent on our fuel supply from people in the world that may not particularly be our friends. That's the situation we're in. I don't see where that is going to change. So to think that we can bail ourselves out for a year by some sleight of hand by taking the money out of a different pocket, it's really the same pocket. It's just the sales tax and so on as opposed to the user tax that we're used to. What we really need to do in this country is press our congressional delegation, both parties and whoever becomes President to correct the fuel problem that we have in this country. France gets 78 percent of its fuel from nuclear power. We haven't built a nuclear power plant in 30 years. Japan is so efficient at it they can build one in three years. We are in just a terrible fix and we need to think nationally about this. As we go on with this, our road construction costs are going up at 11 percent a year. That means that every six years we're doubling the cost of roads. Putting things off road constructionwise I see as pure foolishness. We are just pushing off to the next

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generation of senators what we need to take the bull by the horns and do. The percentage of the gas or fuel bill has gone from 27 percent down to 8 percent. And we're worried about the 8 percent. I don't understand that. We need to worry about the other part where fuel goes to \$4 a gallon, the gas tax has gone down, my friends, percentagewise any way you look at it. Let's look at what the problem is. Let's not be so shortsighted as to do what we're thinking of doing. We have to think long term and we need... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR JOHNSON: ...to do it now. When we talked about this a little bit before, I was a little tempted to end the conversation with this and I think I'm going to now. From what we're hearing around this Chamber today, I'm afraid that if these same people were in charge of the wagon train, we'd still be in St. Joe. Let's have a little bit of vision for the future and make this state great. We can do it and we just can't continue to sit on our hands. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Erdman, followed by Senator Wallman. Senator Erdman, this is your third time on AM2602. [LB846]

SENATOR ERDMAN: I think I'm supposed to be offended by that comment, Mr. President. But candidly, Senator Johnson hasn't really provided any demonstrated reality to his statement that somehow those of us that are trying to provide realistic alternatives would somehow have kept the wagon trains at St. Joe. I don't know about you, but that can be more...that couldn't be farther from the truth. Later I'll tell you what I was going to say. Have you read the amendment? Senator Johnson hasn't. Even if he has, he doesn't understand it. We're not talking about building wagon trains. If the same process we have in place now would have been the process to build I-80, we wouldn't have I-80 either. I mean it's fun, ha ha, pick on Senator Erdman for continuing offering us legitimate ideas that solve the problem. But because you're so beholden to what's before us because you couldn't figure out your own alternative, here you sit. Fine, then vote no. I guarantee you this. This amendment isn't for lack of thought or vision. But it's my vision I guess so maybe it is in the eyes of the beholder. This isn't a sleight of hand. This is a long-term solution. The question is, in determining the long-term solution, whose pocket do you want to get it out of? Do you want to get it out of the states' pocket where we have \$700 million-plus and our receipts, our weekly receipts are actually on the positive? Or do you want to go ahead and stick your hand in the taxpayers' pocket twice--once by raising the fuel tax and second of all by realizing that that increase in the tax that we are now contributing to is going to be showing directly up on the price of the commodities and the items that our consumers are buying at the store? You're not taking it out of one of their pockets. You're taking out of both. Why would you do that? If fuel gets to four bucks, guess what the price of gas, just on the tax is? You're going to cry for this amendment because you won't have the money for roads because you won't

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be able to convince people to buy enough gas. Because when the price of gas goes up, people stop buying it. And when people stop buying it, the variable tax goes up. And when the variable tax goes up, more people will stop buying it. And you will have less money for roads and you'll have a deficit next year and you'll come back and you'll say, ha ha, we showed Senator Erdman on his ideas of trying to provide funding without raising the gas tax. Go for it. But maybe the reason your wagon is still in St. Joe is because you've got it hitched to the post. Last I checked, the horses and the wagons rode to Chimney Rock and that's where I live. So I got a lot further than St. Joe and I got a heck of a lot closer to Bayard than I did Kearney. But that's not what this amendment is about. This is about posturing for some. They're trying to figure out a legitimate reason why they shouldn't vote for this. I can give you some. If you'd rather not pick on me, I can give you legitimate reasons to vote no. But I can give you one very good reason to vote yes. If you vote for this amendment, you will have more votes in favor of funding roads... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: ...than any other bill that's before the Legislature. And you know why? Because we won't be raising people's taxes. We'll be taking existing funds that we have. We won't be contributing to the cost of consumers when the price of fuel contributes to their bottom line or reduces their bottom line. And if the Governor line items out the budget, we will have one bill that will have all of the funding that we can all support, even if he would veto this one. And it's a long-term solution where we truly say to the people of the state of Nebraska, we get it. Roads are important. We're going to fund them. And we're going to be conscious of the fact that you're continually paying more and more and more because of policies at the national level or because of cartels on the international level, but we as Nebraskans in this body get it. And we are not going to contribute to that, but we want you to have good roads. If you don't want that deal, vote no. But I'm voting no on LB846 unless you take it. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Wallman, followed by Senator White, Senator Dubas, and Senator Avery. Senator Wallman. [LB846]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I appreciate this conversation this morning. And my ancestors, I guess, come in covered wagon from Illinois. So this fuel tax thing, I still think we have to have a fuel user tax and General Fund dollars. I just remember where we had to cut school aid to some schools. We didn't have enough money. That's funny isn't it, Senator Kopplin? (Laugh) So that's the way we can go with this. If we have the fuel tax and user tax, it's going to affect one pocket or the other no matter which way we use it. We take it out of our left hand or left pocket or right pocket, somebody has to pay if we want to have better roads. And Senator Erdman has an idea here. It may work for a number of years, it may not. And

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we know so far the fuel taxes work, and people have never complained to me when gas went up 20 cents a gallon at the pumps. For goodness sakes, they didn't complain. And like Senator Johnson says, look at what we took off of the fuel tax. So this is an issue that's probably, you know, very personal to some. But I've interviewed in the taverns, in the coffee shops, and about everybody I talk to says we should have passed a bill last year or earlier, I mean earlier on Senator Fischer's bill on gas. What was the matter with you people? So that's where I'm coming from and also my personal views. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator White, you're recognized. [LB846]

SENATOR WHITE: Thank you, Mr. President. I rise in support of Senator Erdman's amendment and against the underlying bill, and I just note couple of things. As I was driving in today, I was listening to National Public Radio and they were interviewing truckers who are trying to organize a trucker's strike because diesel is over \$4 a gallon in some places. I came in on 10th Street and at a gas station that I sometimes fill up at, diesel was \$3.99 a gallon. Unlike Senator Wallman, I'm hearing from a lot of constituents who are telling me they cannot afford to go to work anymore. That literally at \$4 a gallon if you make \$8 or \$9 an hour and you commute 20 miles each way, you have a horrible problem just making enough to feed yourself and pay for the gasoline to get to and from work. To then ask for more money under these circumstances at the same time we have a record budget reserve and at the moment, at least, the current income looks pretty good, strikes me as really insensitive to the problem that our constituents are facing. I would ask you to please consider the plight of the working person in this regard. Furthermore, I am convinced that we do not properly use the federal money that we are given an opportunity to use. Senator Harms's district, the Heartland Expressway, Senator Nelson obtained the money to build that. It was \$20 million approximately. It would have taken \$4 million for the state to complete that. Now that may not have been the first priority I would pick or even the state Department of Roads would pick. But when you have the federal government telling you it is a priority and they'll pay \$4 out of every \$5, it seems to me I'm flexible enough to reassess. And I think our Roads Department should as well. And if that were the only project, that would be one thing, but it is not. And I've talked to our federal representatives who told us over and over again when they look for cooperation gearing up on projects, getting ready so when they had money for economic stimulus to fund these roads project, they don't get a cooperation from the current Roads Department. That's leaving enormous amounts of money on the table. And if we could just pick it up by funding the Heartland Expressway today and it would be all right, I guess that would be a mistake but it wouldn't be critical. Except in testimony, the Roads Department said unequivocally they're losing grounds at a rate of 11 percent a year to inflation. So the \$4 million that we could have built it for last year now, in fact, we have to pay a lot more. We have to pay over \$2 million because that's what we lost to inflation last year, and we fell behind on that project. I

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cannot in good conscience look at my constituents, ask them to pay more taxes when they're already struggling while I know, know to a substantial certainty that critical roads are not being built because the federal government won't listen to the dictates of our Department of Roads about what should be built first. You know, where I come from he who pays the tab picks where you eat. And if you want to buck that, I think you're making a serious mistake. And yet we're doing that and then we wonder why we have a crisis for lack of money. You cannot continue to leave federal funds that our representatives work extremely hard to get--Senator Nelson is on the Appropriations Committee. He does a really good job making money available for roads in the state and we are not helping him. We're leaving that money on the table. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR WHITE: And we can't do that. I yield the rest of my time to Senator Erdman. Thank you. [LB846]

PRESIDENT SHEEHY: Senator Erdman, 55 seconds. Senator Erdman waives. Senator Dubas, you are recognized. [LB846]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor, members of the body. Would Senator Erdman yield to some questions? [LB846]

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

SENATOR ERDMAN: I will. [LB846]

SENATOR DUBAS: Thank you, Senator Erdman. First of all, I thank you for putting this amendment out for discussion. [LB846]

SENATOR ERDMAN: It's not for discussion. You can vote for it, too. (Laughter) [LB846]

SENATOR DUBAS: Right now, I'll just participate in the discussion. [LB846]

SENATOR ERDMAN: Okay. Just checking. [LB846]

SENATOR DUBAS: But I have found in the short amount of time I've been here, it's very easy for us to identify the problem. It's not always so easy to come up with the solutions. I guess my question to you on this: we know that we operate with finite resources in this state and that we've got to spread those resources out amongst a lot of requests and responsibilities. So do you see this proposal as something that is sustainable, that will not detract from the other needs that this fund provides for? [LB846]

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SENATOR ERDMAN: Again, that's a decision--and I'll try to be as responsive as I can--that's a decision for the Legislature to make. Just as we went through the process in LB988 of determining the needs of the needs formula, which we spent a great deal of time trying to understand that. Ultimately you and I both know that that's simply 25 votes and the Legislature determines the needs. The needs of the state of Nebraska are determined the same way. If it's the commitment of the Legislature to fund roads and to do it the way that I would propose, we would have the will or the better opportunity to do it. Does that mean that it potentially impacts other areas? It could. But again, my sense is, is that if you ask the members of the Legislature just on a piece of paper to list the top things that they would fund, education is probably going to be number one; safety and roads and those types of infrastructure things are going to be two; police safety...you know, those are going to be at the top of the list. The question is how you do it. And you're absolutely right. We've all identified the problem, we all have different ideas of how to solve it. Whether or not this detracts or not will be based on the receipts to the state, as well as what the Legislature spends money on that may not fit into those essential categories. [LB846 LB988]

SENATOR DUBAS: Thank you. Do you foresee any kind of a public hearing process being involved with this? [LB846]

SENATOR ERDMAN: As far as? [LB846]

SENATOR DUBAS: Future...you know, future funding down the road? I mean, is this just something we're putting in statute so it's an automatic, or is there anything that the Roads Department has to come to the--like other agencies, have to come to the Appropriations Committee with their request? Is this something that you would foresee through this? [LB846]

SENATOR ERDMAN: They would, and here's how, Senator Dubas. If they don't, because this amendment doesn't fully fund roads. This simply adds a supplement to what we're already doing. So when the Department of Roads makes their budget request to the Appropriations Committee, they could say today we want \$371 million. By doing that, the gas tax would be axed under the variable. The fixed tax would be 10.5 cents. They would have to make the case...currently they would have to make the case under Senator Fischer's amendment, they would have to make the case under my amendment to the Appropriations Committee on where we set the Department of Roads budget because that's what drives the variable cost which funds the state side of this process. So they would have to do exactly what they're doing now. And there's a good argument to be made that there may need to be better accountability on what they're doing now. But it doesn't undermine any of those efforts that are currently in place, nor replace any of those requirements. It's simply a supplement to what we're already doing without taking it out of the pockets of Nebraskans. [LB846]

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SENATOR DUBAS: Thank you very much. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Dubas. Senator Avery, followed by Senator Engel and Senator Howard. Senator Avery, you're recognized. [LB846]

SENATOR AVERY: Thank you, Mr. President. I was not actually planning to get involved in this debate. I did promise Senator Fischer that I would vote for her bill, and I still will. But Senator Erdman made a comment that I thought needed to be answered, and that is that if we raise the tax on gasoline, that people will stop buying gasoline. That is unlikely and there is a good reason why. Economists have a term for this. It is called demand in elasticity, which simply means that demand for a product does not change significantly with fluctuations in price. And the reason for that is that gasoline is a product that is essential. It is based upon a product, or it's made from a product, petroleum crude, that is scarce. And it lacks adequate substitutes. There's no substitute for gasoline unless you want to convert to some other crude oil-based product like diesel. The problem is that people are going to use gasoline because they need it. Until we do something about the kind of vehicles we drive, that's what we're going to do. The fact that the price of gasoline goes up doesn't mean that airlines quit buying jet fuel. When the price...the fact that the price goes up on heating oil doesn't mean that people who heat their homes with heating oil quit doing that. The fact is, this is a scarce, scarce commodity. Gasoline is essential. It is not easily substituted. I guess one way to put it is gasoline is not coffee. If the price of coffee goes up, that's a very elastic product. If the price of coffee goes high enough, people start drinking tea. And you might also say that gasoline is not wheat. There was a time in this country--and in fact, in Nebraska--when people had bumper stickers; they used to say, a bushel for a barrel. Well, that would never work because there are too many substitutes for wheat and too many substitutes for...and too many other producers who can get in the market that are not in the market now if the price gets high enough. We are talking about a very, very different topic here when we talk about the effect of the price of gasoline on consumer demand. It does not change much. You'll have some conservationists. Some people will not drive as far, they will not go on as many vacations. But you will not see the long-haul truck stop running. That won't happen. So I am telling you that when people say, oh, you'll raise the price of gasoline, people will stop driving, that won't happen. It's an essential product that's not easily substituted. They'll keep using it. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Engel, you're recognized. [LB846]

SENATOR ENGEL: Mr. President, members of the body, speaking to the amendment somewhat here but primarily to the bill. I live in a border area. I live in South Sioux City, Nebraska, and right across the river in Sioux City, Iowa, the gas tax over there is 20.7 cents. And if this all goes through, the bill itself, then it's going to be about 30 cents. So that differential of about 8.3 cents, which is very difficult on a border area. Although I do

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believe that we need a new formula for funding our roads, something more sustainable than we've got now because of the high fluctuation in the price of gas, because less usage, less income. So I do think we need something more sustainable than we do have now. And the thing is, as far as the formula itself, I could support that but I'd like to see it passed without the A bill just to get the formula going so at least we got something...a base to work on from here on. The thing is, too, now you're hearing everything as far as...I know the price of fuel, \$4 a gallon for diesel and delivery costs are so much more than they were before. But like my wife goes to the store and so forth and everything. She says, well, this is so much higher, so much higher because of the cost of transportation. Well, you expect it to be somewhat higher but I think a lot of people are taking advantage of that, too. I really do, because they're using that in order to jump their prices. And I guess that's the way everything works. But it's not the way it should work. But like I say, I do...and another thing, too. I do believe that as far as I'm concerned, using cash funds, of talking to the amendment itself, I realize that's just for this year and from then on it's General Funds. But those cash funds, like I say, they're just here for one-time expenditures and I think we have to be very, very, very, very protective of those cash funds because of the...keep that cash balance there because of the downturn in the economy because you're going to be in a lot of trouble down the road if you don't do that. Another thing I'd just like to mention as far as Department of Roads, I think, you know, they need more money, no question about it. But I also, I think they need some guidance. And by guidance I mean I think when they...as far as right now, they're doing everything piecemeal--a mile here, a mile there, to satisfy somebody politically. I think they should come up with something that...let's finish one project and then we'll start another, and then put that on an agenda and tell everybody this is what we're going to do and when we're going to do it, and by golly, do it, except for emergencies. And up to this point they certainly haven't been doing that. And another thing, I do think they should be thinking about economic development when they're planning their roads, especially the expressways and so forth, that we should be really looking at that if we want to build and grow in Nebraska. So with that, I turn the rest of my time off to the Chair. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Engel. Senator Howard, followed by Senator Kruse and Senator Pankonin. Senator Howard, you're recognized. [LB846]

SENATOR HOWARD: Thank you. Thank you, Mr. President and members of the body. I appreciate Senator Erdman's creativity. I think we all had an opportunity to observe or participate in that this last session. And I also respect Senator Fischer's commitment to addressing our transportation needs. In listening to this debate this afternoon, I find myself very concerned about Senator Stuthman's justification of why farmers should be allowed to exceed weight limits for grain transportation during harvest season. I say to you, the time of the poor farmer has gone. Just yesterday evening we were listening to the debate regarding corporate farming, if I could be allowed to call it corporate farming. It's certainly a departure from the family farming that is historically Nebraskan. And

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along those lines, why do we cut slack for people that now are on an equal footing with everyone else who's earning a living? This really goes to the heart of the argument of who uses the roads and who should pay for the roads. There is always a reason to excuse some group or to be excused for contributing due to special needs. I would suggest that this is an issues we should examine in the future, and I welcome anyone else who's interested in this to contribute their thoughts as well. Before being elected to this legislative body, I worked for the Department of Health and Human Services as a case manager. And my job was located at 1313 Farnam, which is in downtown Omaha. When gas prices increased, people in my building took their lunch hour and drove over to Council Bluffs to fill up their gas tank. It was worth it to do it. People who were patrons of the casinos also took the opportunity to fill up before they returned to Nebraska, because it was cheaper to get their gas over in Iowa. The point being that people can't afford to eat another tax. People are going to do what they need to do to either not drive as much, go across the river, buy gas where the tax is cheaper, or find alternate ways of getting around. I support carpooling and public transportation. I'm a big fan of public transportation. But I really think we need to look at what needs to be done before we impose a tax on people who are trying, trying to support their families, trying to keep their homes, and really trying to keep themselves from sinking under in this economy. I say we need to hold Roads as accountable as we need to hold any other entity. We took another bite out of the education funding. We said do more with less. I say the same thing to Roads. Thank you. [LB846]

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

SENATOR KRUSE: Mr. President, I call for the question. [LB846]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is on the question, shall debate cease? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB846]

CLERK: 26 ayes, 0 nays to cease debate. [LB846]

PRESIDENT SHEEHY: Debate does cease. Senator Erdman, you're recognized to close on AM2602. [LB846]

SENATOR ERDMAN: Thank you, Mr. President. Thank you, Senator Kruse. I'm sure the Speaker is grateful. He hasn't pulled his hair forward like he usually does late at night yet, so he would like to see the agenda move, I'm sure. Let me explain to you what the amendment does. Let me remind you that Senator Avery was a political science professor, not an economics professor. But he knows that. The amendment before you gives us a realistic alternative for a long-term solution to funding roads without raising the gas tax. When we were on the debate on the budget, I made the comment that we

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could have this conversation before the budget passed. We couldn't have that conversation and so people say, well, this is the fourth time that you've tried. Well, realize that the first three times I tried is because you didn't let us debate this bill before the budget. And I was silent on General File to let the people talk about why they wanted this bill. So now I'm doing what I would have preferred to do the first time. So this is the first time and you can count those other ones as two, three, and four. But here's what it does: every year we pass a budget that sets aside 3 percent of the minimum...3 percent in the minimum reserve. It's 3 percent of the budget. You can find that on line 31 of your financial status sheet. It's a little over \$300 million right now. Well, it was: it's \$209 million right now. That's the same mechanism that we use to fund this supplement, and I will tell you it is a supplement. It is designed to replace the increase in the gas tax that Senator Fischer is proposing. It funds roads without raising the gas tax. If this amendment is adopted, you have a better opportunity as members of the Legislature to join with me in providing funding for roads than you have currently before this body. And the reason is, is that you've sent \$14.5 million to the Governor that he's going to veto out of the budget. Then you're going to hopefully--again, hopefully, if Senator Fischer's A bill gets passed--send this to the Governor, which he's going to veto. And then you'll be overriding two separate bills on two separate veto motions to try to get \$30 million of funding. Oh, and by the way, when you're doing that, you're potentially raising the gas tax 6.8 cents above what you're currently paying. That includes what's projected to go in effect July 1. That includes what's projected to happen January 1. But that's all assuming people still buy gas. Senator Heidemann and others are telling me stories of people that he has seen personally pull up to a gas station, they'll put in \$5 worth of gas, and they will drive off. Do you think they're doing that because they like to come back to the gas station every day? They're buying what they need to get by. We as a state are not contributing to that problem any more than we have to and we don't have to contribute any more if you adopt this amendment. In this amendment, it also provides for \$14.5 million to come from the Cash Reserve to the Roads Operation Cash Fund. If that happens, you have no reason, and the Governor can line-item out the gas tax increase and he can't say I saved you from a gas tax increase from the Legislature. It's not true. We saved the people ourselves from a gas tax increase. And the second part of that transfer is the same \$16.102 million that's in Senator Fischer's bill to provide for additional funding for roads, and it's appropriated based on the same percentages out of the Highway Trust Fund. And it is a long-term solution. Now if you don't want to vote for it, that's fine. If you want to take your chances on two separate bills to try to get two overrides to get the money that you need, that's your wishes. But by adding... [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR ERDMAN: ...to the price of gas through the states' tax, you are double-taxing Nebraskans. You are taxing them for those that are buying fuel and you're also taxing those same people as well as others because the transportation costs are

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accounting for...excuse me, the costs of food increases--the wheat, the corn--is only 4 percent and a majority of the remaining is coming from transportation costs. So the reason why your food is going up isn't because of farmers; it's because of the cost of fuel. This is a simple amendment. Whether you vote for it or not is irrelevant to me. It's practical. We need to have a practical solution that works long term. Mr. President, I would ask for a call of the house, please, and I would take a board vote. Thank you. [LB846]

PRESIDENT SHEEHY: We do have 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. [LB846]

ASSISTANT CLERK: 40 ayes, 0 nays to go under call, Mr. President. [LB846]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Nelson, would you check in. Senator Pedersen, Senator Karpisek, the house is under call. Senator Erdman, everyone is present or accounted for. You have heard the closing. The question before the body is on the adoption of AM2602 to LB846. All those in favor vote yea; opposed, nay. [LB846]

SENATOR ERDMAN: Record vote, please. [LB846]

PRESIDENT SHEEHY: We do have a request for a record vote, Mr. Clerk. Please record, Mr. Clerk. [LB846]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1257.) Vote is 17 ayes, 25 nays, Mr. President, on the adoption of Senator Erdman's amendment. [LB846]

PRESIDENT SHEEHY: AM2602 is not adopted. [LB846]

ASSISTANT CLERK: Mr. President, I have nothing further pending on the bill. [LB846]

PRESIDENT SHEEHY: The call is raised. Senator McGill. [LB846]

SENATOR MCGILL: Mr. President, I move LB846 to E&R for engrossing. [LB846]

PRESIDENT SHEEHY: Senator Chambers. [LB846]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, in my office I followed the debate with great interest. I supported Senator Erdman's

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amendment. He had very persuasive arguments. But the step beyond being persuasive is the step of being convincing. So some may have been persuaded that what he said made sense, but they were not convinced that they ought to do it. Now if this bill is vetoed, I'm going to see how many people intend to vote to override. So while I'm standing, I'm going to ask for a machine vote on the advancement of this bill. I didn't want anything I said or might say during the debate to have a negative impact and cause people to vote against an amendment with which I agree. I disagree with the bill itself. And to prevent myself from losing control, Senator Hansen, and saying more than I should, allow me to strike a frivolous note. In my mailbox was an envelope. The return address was DHHS. And under that are the words "Nebraska Department of Health and Human Services." Then it gives a post office box number and it's mailed from Lincoln, Nebraska, if that is really where this originated. And there is a sticker or label which is crooked. The lower part...it's lower on the left end of the envelope and runs up the hill on the right side. And on that label are the words "Senator Ernie Chambers, Legislative District 11, State Capitol, P.O. Box 94604, Lincoln, NE, 68509-4604." And it lists some events which people, dear friends and colleagues, are invited to attend which the Surgeon General is going to present. One is a reception at the Governor's Mansion on Monday, April 14. One is a presentation at NET on April 14. The next one is a breakfast at the Governor's Mansion, April 15, and a reception at Milo Bail Ballroom, April 15. The paragraph that concludes it says you are invited to attend the events, plural, of your choice. To RSVP for one of the Mansion activities, please RSVP to a certain person. I believe that the only ones who got this message saying you spongers, moochers, and leeches come to one of the Mansion events and not both of them. That lets you know that what I've been trying to get across to the public has gotten over the threshold of awareness to at least two people: Joann Schaefer and Sally Ganem. How do you pronounce her name, Ganem? First Lady of Nebraska. And I might add, first person to publicly acknowledge that my colleagues indeed need to be reigned in when it comes to free food, vittles, and perhaps even libations. That's all that I have to say. I'm asking for that machine vote and I will vote against the advancement of this bill. Thank you, Mr. President. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Chambers. There has been a request for a machine vote on the advancement of...Senator Fischer, you're recognized to close on LB846. [LB846]

SENATOR FISCHER: Thank you, Mr. President and members. Nebraska, we have a roads funding problem. As my colleagues, you asked me to come up with a solution to present to you this session. And that's what I've tried to do. I think we've had a long debate on this. I think all of you know where you are on this bill. But I would like to point out to you again that Nebraska is not alone in this funding shortfall that we're facing. Almost every other state is looking to find alternative sources of funding. This year, Minnesota enacted a fuel tax increase of 8.5 cents by the year 2014. Arizona is considering putting in speed cameras statewide to raise an additional \$90 million to

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\$125 million. Colorado and Iowa are trying to raise their motor vehicle registration fees. Remember, that just affects the people who live in those states. In Iowa, we received in the mail yesterday a report from the Council of State Governments that said that their legislators would not consider raising the fuel tax. That's taboo. You can't consider raising a fuel tax. So they're looking at raising motor vehicle registration fees. They're looking at raising taxes and fees on their own citizens instead of at least trying to look at raising a fuel tax that would also bring in revenue from those travelling through their state. Florida is trying to sell off some of its toll roads to private entities. New Jersey wants to increase the tolls. They're looking at increasing it 50 percent every 4 years over the next 12 years. New York is pushing through a congestion pricing tolling. Virginia is attempting to raise its gas tax for the first time since 1986. We are not alone in this problem. Every state is looking at something. When I gave you this bill draft in December and I met with many of you in my office, we had discussions on this and we had discussions on what we could do as a state. I think this is a solution. I think this is a solution that is only a first step. This is a crisis, this is a first step in meeting that crisis. You all know my feelings about user fees. You know my feelings about the General Fund and where I think that money needs to be directed. We have demands on our General Fund revenues. We have demands from education. We have demands from corrections. We have demands from public safety. And we have many wants in this body, too. That comes from General Funds. We have wants on a number of bills that we've heard and are yet to be heard this session, and you can look at your green sheets and look at those A bills. We have responsibilities. We have responsibilities to the people who elected us here within our own district and we have responsibilities to the people of the entire state. [LB846]

PRESIDENT SHEEHY: One minute. [LB846]

SENATOR FISCHER: My major responsibility is to work hard when I'm here, to be honest, and to make the tough votes. This is a tough vote. I hope you will help me move this forward so we can meet the funding crisis that we're facing in this state. Thank you. [LB846]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing to LB846. There has been a request for a machine vote. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. Have a request for a record vote, Mr. Clerk. Please record. [LB846]

CLERK: (Record vote read, Legislative Journal page 1258.) 26 ayes, 14 nays, Mr. President, on the advancement. [LB846]

PRESIDENT SHEEHY: LB846 advances. Next item under Select File, Mr. Clerk. [LB846]

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CLERK: Mr. President, LB846A. Senator McGill, I have no amendments to the bill. [LB846A]

PRESIDENT SHEEHY: Senator McGill. [LB846A]

SENATOR MCGILL: Mr. President, I move LB846A to E&R for engrossing. [LB846A]

PRESIDENT SHEEHY: You have heard the motion. I have a request for a board vote. Senator Chambers. [LB846A]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm not playing a game. I stated in front what I was interested in seeing, how many votes there would be perhaps to override--if I didn't say that, that's what I intended to say--so you can get an idea of the strength or lack of strength this bill has. There has been, as Senator Fischer pointed out and as everybody knows, a lot of debate on this bill. And although there were moments of great contention and, let me become literary, high dudgeon, many of the times the debate was at a very high level. People gave well-thought-out positions. Did I not have a view on this bill I could say that I was proud of the way over all my colleagues comported themselves. But we're in a political environment. It means nothing to say I'm not a politician, I'm a "statesperson." Well, maybe you try to conduct yourself that way, but we are politicians. We practice the art of politics. We know that politics will enter into every decision that we make. So the fact that politics will be involved is not, in and of itself, pejorative. That's like saying what happens in church is religious. It partakes of religion. Well, that's what you expect to find there. That's why I don't go there, because I don't want to find it anywhere, so I know how to conduct myself. That vote was not a strong vote. I don't know whether 5 or 6 or however many votes can be picked up to override a veto, but there will be another vote taken. That will be on Final Reading. And if you vote to pass the bill, you ought to be ready to vote to override the veto. Nobody will be in a position to say, I didn't know what the issues were, I didn't know what was at stake. It can be said, but anybody should be too embarrassed to say it because of the amount of time spent on this bill and the various issues. So I ask for that vote, I ask for a record so that I can look at how people did. On Final Reading I don't have to ask for a record because all those votes are recorded anyway. But on this bill you should think well of what it is you're doing and whether it marks you in a way that you don't want to be marked. Would it mark you as an enemy of the Governor, which you don't want to be marked as? Will it mark you as a coward who flip-flops and waffles, which is what you don't want to be marked as? So what is your alternative? There will be 2, 3, 4 votes against for sure, I think for sure: Senator Lathrop, Senator White, Senator Chambers, and Senator Erdman. There will be at least 1 vote in favor: Senator Fischer. And the rest will be not voting. Thank you, Mr. President. [LB846A]

PRESIDENT SHEEHY: Thank you, Senator Chambers. There has been a request for a

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board vote on the advancement of LB846A. All those in favor vote yea; opposed, nay. There has been a request for a record vote. Please record, Mr. Clerk. [LB846A]

CLERK: (Record vote read, Legislative Journal pages 1258-1259.) 25 ayes, 17 nays on the advancement, Mr. President. [LB846A]

PRESIDENT SHEEHY: LB846A advances. Mr. Clerk, do you have items for the record? [LB846A]

CLERK: I do, Mr. President, thank you. Health and Human Services reports LB1121 to General File with amendments; LB1176, General File with amendments. (Read LB830A by title for the first time.) That's all that I have. (Legislative Journal pages 1259-1261.) [LB1121 LB1176 LB830A]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to next item under Select File.

CLERK: Senator McGill, LB888. I have no amendments to the bill. [LB888]

PRESIDENT SHEEHY: Senator McGill. [LB888]

SENATOR MCGILL: Mr. President, I move LB888 to E&R for engrossing. [LB888]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB888 passes...advances. Next item, Mr. Clerk. [LB888]

CLERK: LB1068, Mr. President. Senator McGill, E&R amendments, first of all. (ER8213, Legislative Journal page 1101.) [LB1068]

PRESIDENT SHEEHY: Senator McGill. [LB1068]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1068]

PRESIDENT SHEEHY: You have heard the motion on the adoption of E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1068]

CLERK: Senator Kruse would move to amend, AM2554. (Legislative Journal page 1118.) [LB1068]

PRESIDENT SHEEHY: Senator Kruse, you are recognized to open on AM2554 to LB1068. [LB1068]

SENATOR KRUSE: Thank you, Mr. President and colleagues. This is fairly simple, direct. It's almost technical. It does not change statutes. It defines how to report. In the

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statute, it requires a report from Roads to us on the needs for transit funding for the handicapped and elderly. We are asking that there be more detail in that report. You'll recognize that as something that we did in the budget bill, but that took care of only this year. This then makes it into the future. There was a hearing on it. Roads is good with it. There's no opposition to it and no fiscal. Thank you. [LB1068]

PRESIDENT SHEEHY: Thank you, Senator Kruse. You have heard the opening of AM2554. Are there members requesting to speak? Seeing none, Senator Kruse, you're recognized to close. Senator Kruse waives closing. The question before the body is on the adoption of AM2554 to LB1068. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1068]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Kruse's amendment. [LB1068]

PRESIDENT SHEEHY: AM2554 is adopted. [LB1068]

CLERK: I have nothing further on the bill, Senator. [LB1068]

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB1068]

SENATOR MCGILL: Mr. President, I move LB1068 to E&R for engrossing. [LB1068]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1068 advances. Next item, Mr. Clerk. [LB1068]

CLERK: Mr. President, LB1058. Senator McGill, E&R amendments. (ER8214, Legislative Journal page 1101.) [LB1058]

PRESIDENT SHEEHY: Senator McGill. [LB1058]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1058]

PRESIDENT SHEEHY: You have heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. Amendments are adopted. [LB1058]

CLERK: I have nothing further on the bill, Senator. [LB1058]

PRESIDENT SHEEHY: Senator McGill. [LB1058]

SENATOR MCGILL: Mr. President, I move LB1058 to E&R for engrossing. [LB1058]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1058 advances. [LB1058]

CLERK: Mr. President, the next bill, LB916. Senator McGill, I have Enrollment and Review amendments. (ER8215, Legislative Journal page 1125.) [LB916]

PRESIDENT SHEEHY: Senator McGill. [LB916]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB916]

PRESIDENT SHEEHY: You've heard the motion on the adoption of E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB916]

CLERK: I have nothing further on the bill, Senator. [LB916]

PRESIDENT SHEEHY: Senator McGill. [LB916]

SENATOR MCGILL: Mr. President, I move LB916 to E&R for engrossing. [LB916]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB916 advances. Next item, Mr. Clerk. [LB916]

CLERK: Mr. President, LB965. Senator McGill, I have Enrollment and Review amendments, first of all. (ER8216, Legislative Journal page 1125.) [LB965]

PRESIDENT SHEEHY: Senator McGill. [LB965]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB965]

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. [LB965]

CLERK: Senator Raikes would move to amend, AM2638. (Legislative Journal page 1242.) [LB965]

PRESIDENT SHEEHY: Senator Raikes, you're recognized to open on AM2638. [LB965]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. This amendment is one that I brought on General File, had some discussion, withdrew it with the promise to bring it back. We made a couple of...well, let me first mention to you the topics covered. One of them is a requirement that counties accept partial payments, part payments, minimum of \$500 for obligations, property tax obligations. The second one is that property taxpayers would receive notice from the county if taxes are

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delinquent. There were a couple other provisions in there which have been eliminated so that the only two provisions remaining are the ones I mentioned. Also, in an effort to accommodate concerns by county officials, the implementation date has been delayed until January 1, 2011. This was at the suggestion of county officials. So that is the amendment. It does, I think, deal with the important issue of accommodating taxpayers at the office trying to make sure that they are accommodated in paying property taxes and also being notified when there is a delinquency. So I'd be happy to try to answer questions. I urge your support. Thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening of AM2638 to LB965. Members requesting to speak: Senator Stuthman, followed by Senator Howard. Senator Stuthman, you're recognized. [LB965]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I have some real concerns with this, this amendment, and I'm going to try to illustrate what my concerns are, and that is the concern of a partial payment to the treasurer of \$500. Now if there...if your taxes are due and you only make a partial payment on it, now there's nothing in the bill that states, you know, if these taxes that are due, is this prior to the time that the taxes are put up for tax sale? Because, you know, after a certain period of time, and I think it is, I'm not for sure but I think later on in the year, taxes are due May 1 and September 1, half and half, the first half May 1, and the second half September 1. And I think if they're not received at a certain point in time, those taxes are put up at a sales tax certificate sale. People do purchase these and they purchase these mainly because they can get a high rate of return on their money. The thing that I'm concerned about is when there's \$500 paid, a portion of it is paid of \$500, let's say the taxes are \$2,000 and you pay \$500 as a partial payment on your taxes that have been due, what does the treasurer have to do as far as if those taxes had already been on sale and someone has purchased that certificate of taxes and has paid the county the taxes? The county has the money of the taxes that are due, but they've not been paid by the individual. They've been paid by the person that has purchased the tax certificate. And like I had stated, if there's \$2,000 due and somebody buys that up and pays the county \$2,000, what method does the treasurer have to credit that \$500 to that tax certificate? Is the interest stopped on that? Does the treasurer keep those \$500? Does the treasurer send the owner of that tax certificate the \$500 in lieu of payment of the \$2,000 that are due? Then the interest, that individual is hoping to get a return on his money, is that stopped? I think there is not a method at the present time where there's a computer program that takes care of the partial payment issue of it. They will have to create another issue. I don't think there's very many people that this portion would really benefit by, and I think if we open up the can of worms there may be some individuals that may take advantage of it. Taxes are in statute. They're due May 1 and September 1. That's what they're due. I don't think we should change that at all. I think we should leave it that way, especially with the fact that if we are in the process, have sold the tax certificates to a person because the individual hasn't paid the taxes. I don't know, and I

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think...and I think prior to when the taxes are due I think they can accept the \$500 for the taxes. Maybe I should... [LB965]

PRESIDENT SHEEHY: One minute. [LB965]

SENATOR STUTHMAN: Maybe I would like to at this time ask Senator Raikes a question, please. [LB965]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR STUTHMAN: Senator Raikes, are you aware of any situation where if your taxes are due May 1 and you decided on February 1 you wanted to pay \$500 of your \$2,000, can you do that at the present time? [LB965]

SENATOR RAIKES: It depends on the county. It would be permissive by the county. [LB965]

SENATOR STUTHMAN: But that is prior... [LB965]

SENATOR RAIKES: It's not required. It's not required, as far as I know, by any county to accept a part payment. [LB965]

SENATOR STUTHMAN: To accept a part payment, yes, but... [LB965]

SENATOR RAIKES: Right, and that's what you're talking about, as I understand your question. [LB965]

SENATOR STUTHMAN: I'm talking about a portion of the payment due prior to the due date of the taxes, not after the due date. I'm talking about prior to it, if the individual can go and say...because a lot of people, they pay their taxes in December that are due May and September. They pay the whole works, you know, prior to that year. [LB965]

PRESIDENT SHEEHY: Time, Senator. [LB965]

SENATOR STUTHMAN: Thank you, Lieutenant Governor. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. (Visitors introduced.) Senator Howard, followed by Senator Raikes. Senator Howard, you're recognized. [LB965]

SENATOR HOWARD: Thank you, Mr. President and members of the body. Unlike Senator Stuthman, I don't have a concern, but I do have a question if Senator Raikes

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would allow me to ask him that. [LB965]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR HOWARD: Thank you, Senator Raikes. I have gotten some e-mails from some counties where they have established a savings account system for people that want to make these early payments. Do you see that this would, in any way, interfere with that system they've already got set up? [LB965]

SENATOR RAIKES: No, it would not. [LB965]

SENATOR HOWARD: Thank you. That answers my question. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Raikes, you're recognized. [LB965]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. In response to Senator Stuthman, it specifically says in the amendment, up to the time the property is offered for tax sale. Beyond that time it is just as it is now, completely permissive by the county as to whether or not they want to accept a part payment. So this only pertains to the time up to the offering of the property, if you will, for tax sale certificate. So I think that addresses, as nearly as I can tell, the situation he described. As to a part payment before delinquency or before the due date, that is permissive now. Nobody is required, no county is required to accept a part payment. The other thing I will mention, as far as I know, we...at the conclusion of the discussion last time I talked with the county officials. I said I wanted to be assured that this issue was going to be dealt with. I would like to have their cooperation on that. They came back with a proposal that we leave out the parts that, in fact, we did leave out, and that we delay the implementation date to January 1, 2011, which we have done. So my intent and my belief is that we have addressed the concerns raised by county officials so, as far as I know, they don't have an objection to this amendment. Again, I do believe, and I...as I mentioned on General File and as I mentioned to them, this is an issue that should be dealt with. This is a matter of dealing in an accommodating fashion with taxpayers. It doesn't make sense to me that if you have an offer from a taxpayer for...to pay money for property taxes, even if it isn't the complete amount, accept whatever is offered. It certainly in no way relieves the obligation on the part of the taxpayer to pay the remainder of the balance due if it's not 100 percent payment or, for that matter, to pay any penalty or interest due because the payment wasn't complete and on time. This simply says that if you get a check for \$500 or more, accept the check and then impose penalties and interest, as you wish, beyond. So again, I'll try to address questions. I do urge your support. Thank you. [LB965]

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PRESIDENT SHEEHY: Thank you, Senator Raikes. This is just to give members notice, we have added LB1154A on your agenda, which will come after LB1154. We will then move to LB1154A. Returning to floor discussion on AM2638, members wishing to speak: Senator Stuthman, followed by Senator White, and Senator Fulton. Senator Stuthman. [LB965]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I would like to engage in a little more conversation with Senator Raikes. [LB965]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR STUTHMAN: Senator Raikes, where...well, first of all, I would...I just wanted to ask have you ever been in a situation where you have had to pay a penalty on your personal property tax or your real estate tax? [LB965]

SENATOR RAIKES: Yes, I have, Senator. [LB965]

SENATOR STUTHMAN: Does...is this...this bill is addressing that situation and you feel that there should be more county employees sympathetic to the fact that you forgot to pay your taxes on the due date? [LB965]

SENATOR RAIKES: Well, sympathy is not a request on my part, Senator. I simply think that if you...from the viewpoint of good government, of good relationships with taxpayers, of funding government services, that if you get a check the obvious thing to do is to take the check, accept the check. Now if there is a penalty or interest due, certainly that should be...remain an obligation with the taxpayer. But some sort of sympathy in the sense that you shouldn't be...you should be exempted from a penalty that otherwise is due or exempted from an interest payment, no, that's not my interest or concern. [LB965]

SENATOR STUTHMAN: Senator Raikes, are you aware of at the present time can an individual, prior to the due date, can he make a partial payment on his taxes? [LB965]

SENATOR RAIKES: It's permissive, as I've said, Senator. At least that's my understanding, that if the county decides they want to accept such payment, they can. There is not a requirement that they accept such payment. [LB965]

SENATOR STUTHMAN: Okay. Thank you, Senator Raikes. The thing that also concerns me is, you know, with the technology that we have right now, and I don't know whether the computer programs, you know, are programmed to accept a partial

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payment on taxes that are overdue; that if your taxes are due and up until the time that they're sold for tax certificate sale, I don't think...I don't know how the treasurers can handle that, as far as accepting a partial payment on taxes that are due that are accumulating interest. I'm not aware of that. I think there's a possibility that maybe it can be adopted, but I think this is just another task or the possibility that counties are going to have to develop or purchase another software program to take care of that portion. I've also been thinking about the fact that we have a lot of people that have home loans and they have monthly payments on the home loan. A portion of that monthly payment is property taxes, because the institutions that loan money out for homes, they take that all into consideration in their monthly payment. They accumulate that money and then they send the money to the treasurer that they have accumulated, you know, the last six months of the partial of that monthly payment for their house payments, and they send that money in to the county on May 1 and September 1. You know, that is a partial payment that everybody is putting in. But that institution is the one that's taking care of that and holding that money at the present time and then applying that to the taxes due on those due dates. I think that's the method that has been established, but they're not sending every month a portion of that money to the county treasurer that, you know, one-twelfth of it, actually, half of the one-twelfth per month in at May 1 at every month so it accumulates up to that amount. I think we're trying to complicate a system that we have in place and that, you know, we have something that we need to address when things are due. I think that's just a fact. And we've adopted policies to address the fact that if people don't, you know, pay their taxes on the due date. I think, you know, there are times when people do, and when I was on the county board we had people that did come in and complain about the interest that they had to pay and the penalty of it, but we dealt with that on a one-to-one basis. So I am not supporting this amendment and thank you, Mr. President. [LB965]

SENATOR LANGEMEIER PRESIDING [LB965]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator White, you're recognized. [LB965]

SENATOR WHITE: Thank you, Mr. President. I rise in support of this. Senator Raikes, may I ask you a few question so that the record is clear as to the purpose and the meaning of this? [LB965]

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

SENATOR RAIKES: Yes. [LB965]

SENATOR WHITE: Senator Raikes, I was on the committee and I voted in favor of kicking this out. One of the concerns that drove this is some counties are literally refusing partial payments for back tax. Is that correct? [LB965]

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SENATOR RAIKES: Yes. They are permitted in statute now, if they choose, not to accept any partial payment. [LB965]

SENATOR WHITE: And the committee's thought was if a citizen is bringing money to the government for taxes they justly owe, it ought to be our business to accept it. Is that not the essence of it? [LB965]

SENATOR RAIKES: That's exactly right, Senator. We did, as you remember, exclude what is less than a substantial amount, less than \$500. [LB965]

SENATOR WHITE: Correct. And, Senator, one of the concerns for Douglas County is would this prohibit a person who is in conformance, paid up on their taxes, from paying month to month in advance so that they could, in effect, make an annual tax...or a semiannual tax bill a monthly installment payment? [LB965]

SENATOR RAIKES: Absolutely not. That is...that is...again, a county is not required to implement such a system but Douglas County has, and this would in no way interfere with their opportunity to continue that sort of a program. [LB965]

SENATOR WHITE: Thank you, Senator. And again, that is also my understanding. And it is my understanding, to the extent if this is adopted by the Legislature, that we will not interfere in Douglas County or any other county's ability to accept payments on a monthly basis so that their citizens are not hit with a big bill every six months. Thank you for your courtesy. I yield the rest of my time to Senator Raikes, should he wish it. [LB965]

PRESIDENT SHEEHY PRESIDING [LB965]

PRESIDENT SHEEHY: Senator Raikes, 3 minutes. [LB965]

SENATOR RAIKES: Thank you, Mr. President. And thank you, Senator White. Again, I would just emphasize, and I did forget one thing, the counties' county officials that I talked to after the General File, there was a provision in that General File amendment that required a \$1 fee that be collected from people who were notified of a delinquent tax, and to accommodate a concern they raised, in this amendment we have made that permissive. So if a county chooses to charge a fee for the delinquency notice on property taxes, they can; if they would like not to do it, they don't have to. The last thing I'll remind you of, this begins January 1, 2011. I was advised by counties that this...by the county officials that this is a concern that they understand and they wish to address. They did want some time to deal with it. That's three years. If that's not enough time, I would question their statement that they really want to address the issue. And again, as I say, as far as I know, the county officials do not have objection to this amendment. It

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puts in place a requirement that by January 1, 2011, the opportunity for taxpayers to make partial payments be in place. And of course, not only do you have three years; you have a number of legislative sessions that will happen between now and then. If there is some revision in this requirement that they feel needs to be brought forward, they will have the opportunity to do so. So again, as far as I'm concerned, we have... [LB965]

PRESIDENT SHEEHY: One minute. [LB965]

SENATOR RAIKES: ...attempted very hard to address every concern that they raised, and I believe have. So again, thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator White. Thank you, Senator Raikes. Senator Stuthman, this is your third time on AM2638. [LB965]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I feel that there possibly is enough time to hopefully work this out. I have another concern of paying a partial payment, and I use the illustration of if an individual owes \$10,000 in real estate taxes and he pays \$500 up until the time that those...that certificate is sold for sale, so that certificate is only going to be sold for \$9,500. It is...but that's only a partial payment of the taxes. What happens the next year when he...the taxes are due and before they're sold again and he pays another \$500? And he can't pay on the ones that are for the tax sale that are sold on the certificate because they can't accept the \$500 for that, but they can accept the \$500 for the additional new...the new year's taxes that are paid. I think there's some things that have to really be thought through, and maybe the three years is enough time to get that done. But I think we have a policy in place that your taxes are due May 1 and September 1, and that can be taken care of. You just need to do that at that time. And I think, you know, the majority of the people are doing it. There are a lot of people that pay them the year prior to that, in December, pay the whole tax bill for the next time that they're due. I think there are methods in place that can take care of this already. I'm really concerned that we're trying to establish something that could in the future open us up to a completely different can of worms about, you know, the paying of it. And once you start to change something like that, I think there's going to be people that will possibly try to utilize that as far as not making payments and hopefully abuse the system, and it's going to get caught up with them and they're going to owe a large amount of taxes just for the fact that they just made a payment of \$500 that's a partial payment. You're not going to have a sales tax certificate that is 100 percent of the sales tax that was due on it. Those are questions that need to be...need to be answered in these next couple years. So with that, I give my balance of my time back to the Chair. Thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Loudon, you're recognized. [LB965]

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SENATOR LOUDEN: Thank you, Mr. President. And I was wondering if...would Senator Raikes yield for a question, please? [LB965]

PRESIDENT SHEEHY: Senator Raikes, would you yield? [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR LOUDEN: Senator Raikes, I've been looking this over and listening to the debate and I'm wondering a little bit what this does. I guess, first of all, this came out of the Revenue Committee, didn't it, your amendment? [LB965]

SENATOR RAIKES: Yes, it came out of the bill, Senator. [LB965]

SENATOR LOUDEN: Or I mean the bill. [LB965]

SENATOR RAIKES: Yes. [LB965]

SENATOR LOUDEN: And your...how come you didn't put your amendment on in the Revenue Committee on this bill then if you was a member of that committee? [LB965]

SENATOR RAIKES: Senator, I don't know that I understand the distinction you draw. You mean made it a committee amendment rather than an amendment on the floor? I think timing is probably the... [LB965]

SENATOR LOUDEN: Well, yes. I mean, usually, if you're a member of a committee and you have an amendment to a bill, I would have thought maybe that discussion would have been there and then we would have known how the rest of the committee would have voted on your amendment, I guess. That was my one question. I'm wondering why you... [LB965]

SENATOR RAIKES: Well, actually, you have that information because the bill was advanced. So you have a committee statement on the bill. [LB965]

SENATOR LOUDEN: Okay. But it was advanced...it didn't have your amendment on there when it was advanced. Is that correct? [LB965]

SENATOR RAIKES: But the bill...this amendment was advanced as a bill with its own committee statement. [LB965]

SENATOR LOUDEN: I see. Okay. Then that, your amendment, was a bill then. [LB965]

SENATOR RAIKES: Yes. [LB965]

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SENATOR LOUDEN: What was the number of that bill? [LB965]

SENATOR RAIKES: LB814, I believe. [LB965 LB814]

SENATOR LOUDEN: Okay. Now what...will this...this amendment then that you have, will that bring about...make a difference on how people can pay their taxes or have to pay their taxes? Now there's a difference, you know, on how they can or whether they have to. There's a difference on that, and which...would it make any...make any challenge on either one? [LB965]

SENATOR RAIKES: It wouldn't, Senator. It would allow an option to the taxpayer, I suppose you could view it, in that if you decide to make a payment either before the due date or, for that matter, after the due date for the tax, and it's \$500 or more, that payment would be accepted. [LB965]

SENATOR LOUDEN: Okay, now... [LB965]

SENATOR RAIKES: Now it would not eliminate any penalty or interest obligation in the event the payment was made after the due date and it was less than a complete payment. [LB965]

SENATOR LOUDEN: Okay. Now the way I've understood this amendment, the way I looked at, then whenever he made a payment on that money it would have to be allocated to each entity that, you know, was in the taxing district. Is that correct? [LB965]

SENATOR RAIKES: Yes, that's correct. It would...it would... [LB965]

SENATOR LOUDEN: Well, now how is it done nowadays? If you go up and pay your real estate taxes, you know, before the first of the year or something like that, that some of them do, is that...do they hold that money till after the first of the year, then allocate it, or how do they do it now? [LB965]

SENATOR RAIKES: Senator, my understanding is it's done once a month. It's allocated once a month. And certainly there are a couple of big months for each county, depending upon when the payments are due. [LB965]

SENATOR LOUDEN: Okay. Then it's allocated whenever the county treasurer either has enough money to allocate or feels that it's worth their time. Is that what you're telling me? [LB965]

SENATOR RAIKES: That's basically it. There may be a statutory minimum, but I'm not

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sure of that. [LB965]

SENATOR LOUDEN: Okay. Then why do you have this in your amendment that they have to allocate it as that money is paid? Why couldn't they go ahead and make this partial payment, like they do, and leave it up to the county treasurer to allocate it whenever they have enough money to allocate? [LB965]

SENATOR RAIKES: Well, I don't think the amendment interferes at all with the way the county allocates the money they receive to the subdivisions, if that's your question. That's done the way it's now done. [LB965]

SENATOR LOUDEN: Okay. I guess my concern is, I'm wondering if... [LB965]

PRESIDENT SHEEHY: One minute. [LB965]

SENATOR LOUDEN: ...if some of our rural counties out there, I mean we don't...a lot of those counties don't have that many people. They come in, pay their taxes probably twice a year and that's the size of it and there's not that many people involved. And I'm concerned whether they're going to have to buy a lot of computer software, something like that, so that they can allocate all of that money as it comes in at once or something like that. And that's my concern, if it's going to cost some of these rural counties some software money. Because whenever you start putting it up to some of those counties, that are at their maximum levy now, that they got to buy something, why, they got to go find the money some place and they usually cut it out of some of them one-lane roads that they're trying to fix. And this is my concern. I'll let you have the rest of the time, Senator, to answer that. [LB965]

SENATOR RAIKES: Thank you, Senator Louden and Mr. President. The concerns you raised are ones that we did not ignore and, again, that's why we put the effective date of this... [LB965]

PRESIDENT SHEEHY: Time, Senator. [LB965]

SENATOR RAIKES: ...three years down the road. Thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Are there additional members requesting to speak on AM2638? Seeing none, Senator Raikes, you're recognized to close. [LB965]

SENATOR RAIKES: Thank you, Mr. President. Again, my belief is that this is a legitimate issue that needs to be addressed in terms of the accommodation of taxpayers. I want to try to do that without overburdening counties, and I think we've done that by allowing...by, first off, taking out several provisions that they objected to

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and, secondly, by allowing three years for the implementation of the remaining objectives. I am not, by doing this amendment, intending that anyone be able to skip out, if you will, on their tax payments or, in fact, avoid any penalty or interest charges, in case they're due because of late tax payments. And again, it would not be required to be implemented for three years. So I think this is a good policy in terms of accommodating the interests of taxpayers without unduly burdening counties, and I ask your support. Thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You have heard the closing. The question before the body is on the adoption of AM2638 to LB965. All those in favor vote yea; opposed, nay. Have all voted who wish? Senator Raikes, did you wish to be recognized? [LB965]

SENATOR RAIKES: Mr. President, I'd ask for a call of the house and a board...or, excuse me, a roll call vote, please. Thank you. [LB965]

PRESIDENT SHEEHY: Thank you, Senator Raikes. 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. [LB965]

ASSISTANT CLERK: 26 ayes, 3 nays, Mr. President, to go under call. [LB965]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Johnson, Senator Pedersen, Senator Nelson, Senator Karpisek, Senator Lathrop, Senator Kruse, Senator White, Senator Rogert, Senator Chambers, Senator Ashford, the house is under call. Senator Nelson, would you check in? Senator Raikes, all members are present and accounted for. There has been a request for a roll call vote. Mr. Clerk. [LB965]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 1262.) Vote is 22 ayes, 19 nays, Mr. President. [LB965]

PRESIDENT SHEEHY: AM2638 is not adopted. The call is raised. [LB965]

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

PRESIDENT SHEEHY: Senator McGill, you're recognized for a motion. [LB965]

SENATOR MCGILL: Mr. President, I move LB965 to E&R for engrossing. [LB965]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye.

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Opposed, nay. LB965 advances. Next item, Mr. Clerk. [LB965]

ASSISTANT CLERK: Mr. President, the next bill is LB1154. I do have E&R amendments. (ER8220, Legislative Journal page 1138.) [LB1154]

PRESIDENT SHEEHY: Senator McGill. [LB1154]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1154]

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. [LB1154]

ASSISTANT CLERK: Mr. President, the next amendment is from Senator Raikes, AM2639, but I have a note he wishes to withdraw this and substitute AM2655. (Legislative Journal pages 1263-1265.) [LB1154]

PRESIDENT SHEEHY: Without objection, so ordered. Senator Raikes, you're recognized to open on your amendment. [LB1154]

SENATOR RAIKES: Thank you, Mr. President, members. This amendment does three things. One, it harmonizes LB1154 with changes made in LB988. Second, it allows that learning community districts may change ESUs within the learning community; and also that the State Board of Education, which is a part of the process for reviewing, if you will, changes by school districts of their ESU, can only deny a change based on noncompliance with the law. Finally, there is a formula correction made for ESUs. You might remember on General File the bill includes a provision that shares funding between the learning community and the educational service unit for school districts within the learning community, and there was a change needed to make that provision work as expected or as intended. We needed to divide the students, as well as divide the value between school districts and ESUs. So those are the three changes, somewhat technical in nature. I would urge your support. Thank you. [LB1154 LB988]

PRESIDENT SHEEHY: Thank you, Senator Raikes. You've heard the opening of AM2655 to LB1154. Are there members requesting to speak? Seeing none, Senator Raikes, you're recognized to close. Senator Raikes waives closing. The question before the body is on the adoption of AM2655 to LB1154. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1154]

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes's amendment. [LB1154]

PRESIDENT SHEEHY: AM2655 is adopted. Next amendment. [LB1154]

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CLERK: Senator Synowiecki would move to amend with AM2650. (Legislative Journal page 1265.) [LB1154]

PRESIDENT SHEEHY: Senator Synowiecki, you're recognized to open on AM2650. [LB1154]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Members, the amendment, AM2650, essentially changes one word. If you go to the job training section on the committee amendment, it relates to the partnerships for job training and within the section, that is Section 81-1203, it identifies, within the definition of a "high poverty area," it would exclude sections of southeast Omaha, as it is currently written. And if it is the intention of this section to include what I believe is widely recognized as an economically challenged and ethnically diverse section of the metropolitan area--southeast Omaha--then we would need to change the one word in line 27 from "families" to "persons," and that is what the amendment simply does. This has to do with census tract language and south Omaha does not meet the threshold under "families," but it does for "persons." So that's essentially what the amendment does, is change one word on line 27, page 64, of the committee amendment. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the opening of AM2650 to LB1154. Members wishing to speak, Senator Raikes, you're recognized. [LB1154]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I appreciate this amendment brought by Senator Synowiecki and do support it. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Are there additional members wishing to speak? Seeing none, Senator Synowiecki, you're recognized to close. Senator Synowiecki waives closing. The question before the body is on the adoption of AM2650 to LB1154. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1154]

CLERK: 26 ayes, 0 nays on adoption of Senator Synowiecki's amendment. [LB1154]

PRESIDENT SHEEHY: AM2650 is adopted. [LB1154]

CLERK: Mr. President, Senator Kopplin would move to amend, AM2653. (Legislative Journal page 1265.) [LB1154]

PRESIDENT SHEEHY: Senator Kopplin, you're recognized to open on AM2653. [LB1154]

SENATOR KOPPLIN: Thank you, Mr. Lieutenant Governor, colleagues. I bring this

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amendment. There is some concern on school districts about Section 14 of this bill. I realize there doesn't...isn't a lot of interest in this bill right now so I don't intend to stretch this out, but basically what Section 14 is has to do with funding and it takes 50 percent of the core services and technology infrastructure funds from the ESUs and gives them to the learning community to be used for learning community purposes. Now we're not quite sure what that is, but what this does, you have two ESUs involved, ESU 3 and ESU 19. ESU 19 isn't such a problem, but it is a problem in that half the funds that went to ESU 19 or originally, anything that went to ESU 19 was the same as going to Omaha Public Schools because they had the same board, and what it does now, ESU 19 would, half of those funds would go to the learning community. For the ESU 3, those school districts of ESU 3 which are members of the learning community, half of the funds that went to ESU 3 for core services and technology infrastructure funds are now transferred to the learning community, again, for learning community purposes, which are not defined. That's what Section 14 does. It is a concern to some schools, so I put the amendment on. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Kopplin. You've heard the opening of AM2653 to LB1154. Members requesting to speak: Senator Raikes, you're recognized. [LB1154]

SENATOR RAIKES: Thank you, Mr. President, members. Senator Kopplin, I think, provides an opportunity with this amendment to remind you of what we're about with this particular section, as he mentioned. What it does is it provides funding, he mentioned half of the funding, and again only for school districts that are within the ESU. And certainly, as he mentioned, ESU 19 has only one school district that is in the, excuse me, learning community. In ESU 3 there are districts both within the learning community and without the learning community. This amendment deals only with the school districts that are within the learning community and it only deals with that part of their funding that comes from the state. As you know, ESUs have property tax authority as well as core services and infrastructure funding money from the state. All the property tax money that they now receive as ESU remains with the ESU. Half of the funding attributed only to those school districts that are in the learning community would then go to the learning community; the other half remains with the ESU. It's a way to deal with the issue of having several organizational structures in the learning community and at least the possibility that there is an opportunity to streamline. For example, among the requirements of the learning community council will be administration, staffing and that sort of thing. There is some General Fund money that has been appropriated to the learning community council to conduct those functions, but certainly if it is to be successful there will be needs along those lines plus additional needs. So rather than appropriate additional General Fund money, it was deemed a reasonable idea and, in fact, even suggested by ESU 3 in the committee hearing, that ESU 3 provide some of those services. This is a way to make sure that only those school districts that are in the learning community share in the provision or the funding for the provision of those

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services. That is the intent. I think it's a good way to do things and so I support that way and I would, therefore, oppose Senator Kopplin's amendment. If there are any questions, I'll try to address them. Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Additional members wishing to speak: Senator Lautenbaugh, followed by Senator Pahls. Senator Lautenbaugh. [LB1154]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor and members of the body. I wonder if Senator Raikes would yield to a few questions? [LB1154]

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

SENATOR RAIKES: Yes. [LB1154]

SENATOR LAUTENBAUGH: Senator Raikes, thank you, and speaking specifically of the Blair school district, it's within ESU 3? [LB1154]

SENATOR RAIKES: Yes. [LB1154]

SENATOR LAUTENBAUGH: But it is not within the learning community? [LB1154]

SENATOR RAIKES: That's correct. [LB1154]

SENATOR LAUTENBAUGH: And as I understand it, they're not applying to join the learning community either, so that's not where I'm going with this. How would this work without the amendment vis-a-vis their relationship with ESU 3? [LB1154]

SENATOR RAIKES: Basically, Senator, the Blair school district, being a school district outside the learning community, does not participate in this Section 14 provision of LB1154, so it would be unaffected. The ESU would keep all the core services money and infrastructure funding money; in addition, the property tax money from the Blair school district, and would use that funding to provide services to that school district as they now do. [LB1154]

SENATOR LAUTENBAUGH: So, Senator Raikes, the core funding money, the 50 percent of which is being taken from the ESU, that comes only from the districts that are in the learning community? [LB1154]

SENATOR RAIKES: That's correct. [LB1154]

SENATOR LAUTENBAUGH: Now, is there a chance that that's going to impair the ESU's ability to perform the core funding services throughout the ESU, whether we're

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talking in the learning community or outside? [LB1154]

SENATOR RAIKES: Well, I suppose you could argue that. On the other hand, the funding base provided the ESU is intact for those districts outside. So what you're saying, if some of the money collected or collected from the state through core services and infrastructure funding, if part of that was used to serve school districts outside the learning community, if that's the concern you raise, well, maybe that is a concern. I don't know that that is a critical concern in that you probably expect that the money would be pretty much directed to the school districts from which it's collected. And I think generally, especially with ESU 3, they've made it a practice of trying to do that. [LB1154]

SENATOR LAUTENBAUGH: Senator, I'll represent to you I'm not an expert on the ESUs and how they function. But as I understand it, they're kind of a shared service unit to provide for some of the smaller districts, if you will? [LB1154]

SENATOR RAIKES: Actually that's correct. They provide...in ESU 3's case, they provide for both small and larger districts. So there's Millard is the largest district in ESU 3, and I don't know which one is the smallest, but they range down considerably in size. [LB1154]

SENATOR LAUTENBAUGH: Now, is it accurate to say it's set up to take advantage of perhaps economies of scale? [LB1154]

SENATOR RAIKES: Economies of size and also cooperative cooperation providing services that are needed by several school districts. [LB1154]

SENATOR LAUTENBAUGH: And the bill, as it's written, without the amendment, takes 50 percent of...I'm sorry, the core services funds? [LB1154]

SENATOR RAIKES: Simply the state money that goes to ESU 3 only for the learning community districts, so that is core services and infrastructure funding money. [LB1154]

SENATOR LAUTENBAUGH: Does that impair the ESU's ability to provide the core services for those districts that are within the learning community? [LB1154]

SENATOR RAIKES: Well, you know, it might. You're not creating additional funding. So, you know, there's not a general fund money. You are, in fact,... [LB1154]

PRESIDENT SHEEHY: One minute. [LB1154]

SENATOR RAIKES: ...directing part of that funding to the learning community council, which again serves the same school districts, but in a different capacity. [LB1154]

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SENATOR LAUTENBAUGH: And by extension, then Senator, if we're impairing the ability to do the core services for those districts that are within the learning community, might we also be impairing the ability to provide the core services for those districts that are within the ESU but not within the learning community? [LB1154]

SENATOR RAIKES: Again, you might, but it would depend on the allocation formula that was used, and that is, of course, a decision of the ESU itself. [LB1154]

SENATOR LAUTENBAUGH: Thank you, Senator. I'll yield my time. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Pahls, you're recognized. [LB1154]

SENATOR PAHLS: Mr. President and members of the body, could I have a question or two for Senator Raikes just for a clarification? [LB1154]

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

SENATOR RAIKES: Yes. [LB1154]

SENATOR PAHLS: Senator, I talked to you about this a little earlier this morning, and I just have a question or two that I received an e-mail from the Millard school district, and they have a concern, and you would know more, of course, about this funding than I. They are telling me they are going to lose \$350,000. These dollars they have used in the past for technology. They basically have a third of the ESU's valuation. Now, they're losing that \$350,000. What are they gaining in...because I'm assuming the money is going to the learning community. What would I tell them that they're gaining from this? [LB1154]

SENATOR RAIKES: Well, Senator, I'll try to address the question, and whether I can give you an answer that satisfies you, I guess we'll see. I talked with the Millard school district also, and they said, well, look, in state aid funding we're going to incur a drop of \$11 million, as a state, and some of that would be shared by the Millard school district for the 2008-09 school year. We're, at the same time, going to incur a loss of funding to ESU 3, which may, in fact, be passed on to us. My one response is this: Is that this provision does not take place until 2009-10, so there is a year delay beyond the time when the reduction in the state aid formula took place. The second thing I would point out is that the funding formula, LB988, makes revisions to the funding formula which, again, probably will go...be ongoing for a number of years, but I think that is the important, very important part of the future financial picture for Millard, as well as other school districts. The \$350,000, and I don't know exactly whether that, we'd be talking about half of \$350,000 or \$350,000 or what the total might be. In addition to being delayed to 2009-10, that is an arrangement, a decision by ESU 3. [LB1154 LB988]

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SENATOR PAHLS: Okay. [LB1154]

SENATOR RAIKES: They have done that as far as I know, with a number of school districts in the ESU, and basically, as Senator Lautenbaugh mentioned, they're talking about using scale to provide services to school districts. Well, when they've got a Millard with 22,000 students and they've got another district maybe with 500 or fewer students, the types of needs that could be provided by ESU vary greatly. In some of the bigger districts that have basically said to ESU 3, look, we don't need to have you provide us professional development of the staff or whatever it might be; we will instead do a cash settlement with you instead...or I don't think they used the term "cash settlement"--that's mine--but you get the idea. So that is a decision by ESU 3. Millard would remain a part of ESU 3. It would remain eligible, but they're also a part of the learning community, and whatever programs are offered by the learning community council, they could benefit from them as well. [LB1154]

SENATOR PAHLS: And I understand where you're coming from, Senator, but as I read it, it says that basically they have used this money to buy technology, and they do have a third of the ESU valuation. So they're pretty high up on the scale. You're telling me this money is going to come back to the district in an indirect way, since they are part of the learning community? [LB1154]

SENATOR RAIKES: Well, Senator,... [LB1154]

PRESIDENT SHEEHY: One minute. [LB1154]

SENATOR RAIKES: ...I'm not making decisions for the learning community council, nor am I making decisions for ESU 3. And ESU 3 may or may not decide to reallocate the other half of the money, if you will, in a different fashion. I simply don't know that. But I will tell you that looking at the financial picture for Millard or other school districts, in Millard's case if it is \$300,000, that's Millard's budget is \$72 million...am I roughly on course there? [LB1154]

SENATOR PAHLS: Yes. Right. And I understand, in the big scheme of life it's maybe not that large of an amount, but if you keep taking away, that's their concern, with some of the... [LB1154]

SENATOR RAIKES: Well, and again I think we've addressed that by delaying the implementation of this well beyond the first year of the revision of the aid formula, if you will. [LB1154]

SENATOR PAHLS: Okay. And this money... [LB1154]

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PRESIDENT SHEEHY: Time, Senator. [LB1154]

SENATOR PAHLS: Thank you. [LB1154]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Thank you, Senator Raikes. Additional members requesting to speak on AM2653? Seeing none, Senator Kopplin, you are recognized to close. Senator Kopplin waives closing. The question before the body is on the adoption of AM2653 to LB1154. All those in favor vote yea; opposed, nay. Have all voted who wish? I do 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. [LB1154]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB1154]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Kopplin, all members are present. Do you request a call-in or roll call? [LB1154]

SENATOR KOPPLIN: Call-in vote. [LB1154]

PRESIDENT SHEEHY: We do have a request for a call-in. Mr. Clerk. [LB1154]

CLERK: Senator Lathrop voting yes. Senator Pirsch voting yes. Senator Engel voting no. Senator Hudkins voting no. Senator Chambers voting no. Senator Schimek voting yes. Senator Kruse voting yes. Senator Janssen voting no. Senator Pankonin voting yes. Senator Fulton voting yes. Senator Preister voting yes. Senator Stuthman voting yes. Senator Nantkes. Senator Nantkes, I'm sorry; how did you want to vote? Vote no. Thank you. Senator Nantkes voting no. Senator White voting yes. Senator Ashford voting no. Senator Hansen voting yes. [LB1154]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1154]

CLERK: 20 ayes, 13 nays, Mr. President, on the amendment. [LB1154]

PRESIDENT SHEEHY: AM2653 is not adopted. The call is raised. [LB1154]

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

PRESIDENT SHEEHY: Senator McGill. [LB1154]

SENATOR MCGILL: Mr. President, I move LB1154 to E&R for engrossing. [LB1154]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1154 advances. We'll proceed to LB1154A, Mr. Clerk. [LB1154 LB1154A]

CLERK: LB1154A. Senator, I have no amendments to the bill. [LB1154A]

PRESIDENT SHEEHY: Senator McGill. [LB1154A]

SENATOR MCGILL: Mr. President, I move LB1154A to E&R for engrossing. [LB1154A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1154A advances. Mr. Clerk, do you have items for the record? [LB1154A]

CLERK: I do, Mr. President. The Committee on Judiciary, chaired by Senator Ashford, reports LB1128 to General File. And Enrollment and Review reports LB853 as correctly engrossed. That's all that I have, Mr. President. (Legislative Journal page 1266.) [LB1128 LB853]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll move to LB736. [LB736]

CLERK: LB736. Senator McGill, I have Enrollment and Review amendments. (ER8218, Legislative Journal page 1139.) [LB736]

PRESIDENT SHEEHY: Senator McGill. [LB736]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB736]

PRESIDENT SHEEHY: You've heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB736]

CLERK: Senator Fulton would move to amend with AM2606. (Legislative Journal page 1266.) [LB736]

PRESIDENT SHEEHY: Senator Fulton, you're recognized to open on AM2606. [LB736]

SENATOR FULTON: Thank you, Mr. President. I'll try to explain this briefly, succinctly, and in such a way that everyone can understand. What we passed from General to Select File set up the Ignition Interlock Device Fund, and that fund we're going to use some of--it's a cash fund--and we're going to use some of the monies in that fund to pay for indigents' ignition interlock devices. The ignition interlock permit is also a requirement that we passed from General to Select File. That permit costs \$45. Five dollars would be utilized by DMV for the permit itself; \$40 or thereabouts would be

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relegated the General Fund. Actually, Senator Chambers pointed this out to me some time back when we were discussing this bill, and it's something with which I agree with him on. The provisions of this bill could be construed as punitive, and so that \$40 could reasonably be construed as punitive. At such case, it would be a requirement that that \$40 not be relegated to the General Fund, but moved otherwise to schools. We have a constitutional requirement that fees paid as a result of a penalty should go to schools. And so to address that concern or that potential concern, we're going to move with this amendment, AM2606. Instead of having that \$40 revert back to the General Fund, we'll have that money revert into the Ignition Interlock Device Fund. And this will accomplish two things: (1) we won't have the potential concern of working against what's a constitutional requirement, and (2) we'll be better able to track these funds if they are put into a cash fund, as opposed to just relegated to the General Fund. So for those two reasons I'll ask you to support AM2606. It helps us to be able to keep better track of this now and into the future as I continue service, hopefully on Appropriations Committee here in the Legislature, it's something that I'd like to keep an eye on, and having this moved into a cash fund specifically for indigents and for a specific purpose, rather than the General Fund; helps us to keep better control and management of the money associated with this bill and initiative. So I ask you to move AM2606 on to LB736, and then hopefully we can move it on to Final Reading. Thank you, Mr. President. [LB736]

PRESIDENT SHEEHY: Thank you, Senator Fulton. You have heard the opening of AM2606 to LB736. The floor is open for discussion. Senator Fulton, no requests to speak. You're recognized to close. Senator Fulton waives closing. The question before the body is on the adoption of AM2606 to LB736. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB736]

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Fulton's amendment. [LB736]

PRESIDENT SHEEHY: AM2606 is adopted. [LB736]

CLERK: I have nothing further on the bill, Mr. President. [LB736]

PRESIDENT SHEEHY: Senator McGill. [LB736]

SENATOR MCGILL: Mr. President, I move LB736 to E&R for engrossing. [LB736]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB736 advances. We'll proceed with LB736A. [LB736 LB736A]

CLERK: LB736A. Senator, I have no amendments to the bill. [LB736A]

PRESIDENT SHEEHY: Senator McGill. [LB736A]

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SENATOR MCGILL: Mr. President, I move LB736A to E&R for engrossing. [LB736A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB736A advances. The next item, Mr. Clerk. [LB736A]

CLERK: Mr. President, LB1147. Senator McGill, I have Enrollment and Review amendments, first of all. (ER8175, Legislative Journal page 746.) [LB1147]

PRESIDENT SHEEHY: Senator McGill. [LB1147]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1147]

PRESIDENT SHEEHY: You've heard the motion on the adoption of the E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1147]

CLERK: Mr. President, Senator Synowiecki would move to amend, AM2391. (Legislative Journal page 1067.) [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki, you're recognized to open on AM2391. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor and members. You may recall that LB1147 contains provisions that were introduced on behalf of the Nebraska Public Employees Retirement System. This particular amendment, AM2391, is at the request of the Nebraska Investment Council. This amendment would require a review of the current statutory, regulatory, and organizational situation of the Nebraska Investment Council, and the best practices of similar state investment offices. A qualified independent organization will be hired to conduct the review and make recommendations to the Investment Council, the Governor, and the Legislature. This particular initiative was introduced as LB1143 and was advanced to General File by a 6-0 vote of the committee. Currently, most of the states' investment activities are outsourced, with large payments going to firms outside of Nebraska. The state budget process has not allowed the NIC staff composition or compensation levels to keep pace with the rapid growth of assets or the increased complexity of the investment strategies. In 2007, the Nebraska Investment Council had nearly \$25 million in expenses. Let me repeat that: They had \$25 million in expenses. Twenty-one point three million, or 85 percent, was paid to external managers, and less than 6 percent was paid to agency staff to manage funds. Nebraska spends about 19 basis points to manage our investments. South Dakota, which manages most of its investments in house, spends about 7 basis points, or comparatively, only 37 percent of what we spend, and they experience returns that are as good as if not better than ours. This amendment would give the NIC the resources to complete a thorough, long-term review of their structure to

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see if there are better practices for management of our investments. I might remind the members that the Nebraska Investment Council manages over \$15.3 billion of assets that were present as of September 30, 2007. I offer this as an amendment to LB1147. Thank you. [LB1147 LB1143]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You've heard the opening of AM2391 to LB1147. The floor is open for discussion. Seeing no one requesting to speak, Senator Synowiecki, you are recognized to close. Senator Synowiecki waives closing. The question before the body is on the adoption of AM2391 to LB1147. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1147]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Synowiecki's amendment. [LB1147]

PRESIDENT SHEEHY: AM2391 is adopted. (Visitors introduced.) The next amendment, Mr. Clerk. [LB1147]

CLERK: Senator Synowiecki would offer AM2600. (Legislative Journal page 1189.) [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki, you're recognized to open on AM2600. [LB1147]

SENATOR SYNOWIECKI: Thank you again, Mr. Lieutenant Governor and members. AM2600 creates an early retirement option for the judges retirement plan. This amendment contains provisions of LB365 which was advanced to General File with no dissenting votes. A normal retirement age in the judges plan is 65. Under AM2600, a judge electing to retire at age 64 would have his or her earned retirement benefit amount reduced by 3 percent; if they retire at age 63, 6 percent; and if at age 64 (sic--62), a 9 percent penalty would incur. Members, I don't take this lightly. I'm not normally a proponent of enhanced benefits toward defined benefit plans, as such enchantments create the potential of future liabilities of the state. However, in this case, I do think it makes some degree of sense. The judges retirement plan is the healthiest of our defined benefit plans, and is currently 107 percent funded. Additionally, should the judges plan need additional contributions in the future to meet liabilities, I have received a written pledge from both the county and district court judges that they will come to the table and bargain in good faith to adequately fund their plans in the future. Many of you, obviously, were not here a few years back when these retirement plans took...went south on us pretty dramatically and pretty quickly. And for members' background, I want to just share with you that we have three...obviously we have three defined benefit plans: one for the teachers, one for the troopers, and one for the judges. When these plans took a dramatic downturn, the troopers and the teachers and the school boards all stepped up to the plate and put their own members' contribution levels

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on the table, and they worked with the Legislature in good faith to mitigate the liabilities in their individual plans. The judges were not agreeable to that. The judges did not agree to look at the member contribution rate as a potential answer to the problem that we confronted back in 2002, I believe it was. So when they approached me with this suggestion of this early retirement benefit, given their current condition of their plan, I immediately advised I would not be involved in it unless I had assurances from both the District Judges' Association and the County Judges' Association that should these plans go south on us again, which is a plausible probability that may happen in the future, that they will come to the table in good faith and have their members' contribution a part of the remedy for the plan should these plans go south, as I indicated. I have written letters from Judge Flowers who is the current president of the Nebraska District Court Judges' Association, and I have additional memorandum from the County Judges' Association president, assuring that they will come to the table, if need be, in future years if these plans need additional financial remedy relative to the solvency of the plans. So with that assurance and given the current condition of the plans, I agreed to bring the amendment for the your consideration. Thank you. [LB1147 LB365]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You've heard the opening of AM2600 to LB1147. Members requesting to speak, Senator Gay. [LB1147]

SENATOR GAY: Thank you, Mr. President. Would Senator Synowiecki yield to a few questions? [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB1147]

SENATOR SYNOWIECKI: Yes, I would. [LB1147]

SENATOR GAY: Senator Synowiecki, I thought you did a good job explaining the commitment by the judges, and this is something it sounds like you've been working on it for some time, but you do actuarial studies on these pension funding, I'm sure, for each...like for the judges, State Patrol, teachers? [LB1147]

SENATOR SYNOWIECKI: Actually, Senator Gay, it's a statutory requirement that we have an actuarial study done whenever we consider an enhancement to any of the plans. [LB1147]

SENATOR GAY: Okay. So this would enhance the plan, and right now, if you're over...they have 107 percent funding. But if you're giving a benefit on their word that they're going to...and I have no question to...no disagreement to argue that word, and you have some letters there, apparently, saying as much. But I guess is that normal that we give the benefits prior to...? I think wouldn't you do a study and kind of have them come to the table and sign that agreement that we're open to do it? Something signed, I guess, to do that? Or make a motion and an approval or something? [LB1147]

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SENATOR SYNOWIECKI: No. Senator Gay, what the courts have ruled, and actually Senator White was part of this, under a defined benefit program, Senator Gay, we cannot arbitrarily reduce benefits. We can't do that. The court views these retirement plans as a contract with the members. And what we attempted to do in 2002, and in fact we did do, was if I recall correctly reduce the benefit in the judges plan to help remedy what the fiscal condition of those plans were, the actuarial conditions of those plans. They sued and they won. The teachers and the troopers, however, came to the plate, put their members' contribution levels on the table. They've worked with the Legislature. We remedied it through that. [LB1147]

SENATOR GAY: Okay. So I must have missed that. So this was based on a lawsuit. You're going back and fixing a problem that occurred prior. The problem was there was a change made, not necessarily you, but the committee made a change, and they had never agreed to it, and now there was a lawsuit. Now we're coming back and correcting that situation, is that what we're doing here then? [LB1147]

SENATOR SYNOWIECKI: Not necessarily, Senator Gay. I mentioned the agreements because obviously with term limits I think it's important that we get it on the record. It really has nothing...what we have...what we're confronted with today, Senator Gay, is a judges retirement plan that is quite healthy, funded at like 107 percent. But we also have a history there of...I don't want to label it, but the judges did not come to the plate like the other defined benefit members did, and I advised that, as the sponsor of the bill and as Chair of the committee, I would not bring this unless we had an agreement so that we get in a mess like we did in 2002 that they would indeed come to the plate, negotiate, and that member contribution rates would be part of the discussion. So I gave all that essentially for background. [LB1147]

SENATOR GAY: Okay. So the legal counsel or the Retirement Committee has an agreement now or you have a commitment they will come to an agreement? Do they have...there's no written agreement now? You just have a commitment they will come to an agreement if they are short-funded, if this is short and you don't have 107 percent in the fund, and it goes to 70 percent, to me that commitment, you will...they will have to come to the table. That's just a gentleman's agreement or is it a written agreement? [LB1147]

SENATOR SYNOWIECKI: We actually have a written documentation of it. But, yeah, you're precisely correct. I did that...I think I was looking in the best interests of the solvency of the plans and the best interests of the Legislature as a body that appropriates money for these plans. Although the judges plan, we actually don't put any General Funds in that fund. It comes from court fees. [LB1147]

SENATOR GAY: Right. So, Senator Synowiecki,... [LB1147]

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PRESIDENT SHEEHY: One minute. [LB1147]

SENATOR GAY: ...what you're saying then probably, and I'm just trying to understand this, what you're saying is there's no need to collect at this time, because you're overfunded. You're 107 percent. When we...if things change, market conditions change, and it goes to 50 percent, let's say, then obviously the judges would, for their own best interest, would want to put more money into that plan. So what you're saying is if it goes down to where they need to put more funding in, they will have that agreement, and we're satisfied as a state they're done, and we can hit our lights again to continue if you want. [LB1147]

SENATOR SYNOWIECKI: That's precisely the intent of me garnering these agreements was for the Legislature looking out for the best interests of the body, that they will come, and members' contributions will be part of the discussion when we're hit these hard times again, and should we have to do some mitigation relative to the solvency... [LB1147]

PRESIDENT SHEEHY: Time, Senator. [LB1147]

SENATOR GAY: Thank you. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Gay. Thank you, Senator Synowiecki. Members wishing to speak, Senator White and Senator Wallman. Senator White, you're recognized. [LB1147]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. Senator Gay, I am guilty of being the lawyer that represented the judges in the federal lawsuit that ended up making it impossible for this body to reduce their benefits or asking for contributions without some additional consideration on our side going to them. And that's because the way the law looked at it, it is a contractual promise that the state makes to public employees when they come into employment, that these are the terms of your retirement, you'll take, in effect, less money than you could make in the private sector, and you can rely on that. And then if you put years of service in, we're not able to change it to reduce those benefits unless we give some kind of additional benefit in a different area. The legal term is consideration. Because of that, Senator Synowiecki and Senator Erdman and we had talked, and this is the best that we can come up with that gives us the flexibility that the judges have agreed in advance that if we extend this benefit to them now, if we need to ask them for contributions, they haven't committed any amount but they've agreed to sit down and talk to us in good faith. We can use this as evidence that have, in fact, extended consideration in advance to obviate a lawsuit of that type later. And so that's...whether it ultimately would work, I mean nobody knows for sure, but it's certainly the best effort we can do now to preserve our options at no

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cost in the future. And I'd yield the rest of my time to Senator Synowiecki. [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki, you're yielded 3 minutes 20 seconds. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Thank you, Senator White. There is no actuarial sound reason to raise the judges contribution rates at this point. It's a profoundly sound plan at this time, 107 percent funded. So what we did is we got agreements, as Senator White indicated, that come the time where these plans are not as sound as they are now, it may need an influx of resources that judges, their members' contribution levels will be a part of the discussion to remedy the situation for the plans. Right now, as I understand it, there is in excess, unencumbered within the judges retirement plan, \$1.5 million of assets that are excess. This plan, this plan under the actuarial analysis, will cost \$660,000. So we'll maintain a \$900,000 excess in the plan, which represents a 27 percent cushion. To give you some idea of comparison, statutorily in our cash balance plan, we statutorily put in a threshold of a 10 percent cushion. So even with this additional benefit, this early retirement plan, the judges retirement program will maintain a 27 percent cushion. Thank you. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Thank you, Senator White. Senator Wallman, followed by Senator Gay. Senator Wallman, you're recognized. [LB1147]

SENATOR WALLMAN: Thank you, Mr. President. Can I have a little conversation here with Senator Synowiecki? [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB1147]

SENATOR SYNOWIECKI: Yes, I would. [LB1147]

SENATOR WALLMAN: Do you have any idea how many judges choose early retirement? [LB1147]

SENATOR SYNOWIECKI: How many judges do what, Senator Wallman? [LB1147]

SENATOR WALLMAN: Choose early retirement. [LB1147]

SENATOR SYNOWIECKI: Right now, it's not an option. It's a...judges retirement is fully funded for the member when they...I believe it's 20 years of service, and they cannot draw until the age of 65. [LB1147]

SENATOR WALLMAN: Okay. [LB1147]

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SENATOR WIGHTMAN: Twenty years of service and age 65. [LB1147]

SENATOR WALLMAN: Thank you. You know, I'm all for retirement, but some of these professional people that are very capable, I hate to see them retire early because, you know, they still have a lot to contribute to society. So that's all I have to say. Thank you, Senator Synowiecki. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Gay. [LB1147]

SENATOR GAY: Thank you, Mr. President. I just wanted to rise and say the questioning had no...I have no conflict at all with this, and I just wanted to thank Senator Synowiecki and Senator White for explaining a little more what's happening. It's overfunded. There is an opportunity for them to get into this early. But I think it's important that we discuss that, and Senator White did a good job giving us a little history for...you will be gone, Senator Synowiecki, and maybe some of us will know what's happening here. But I think as long as the committee, which I see unanimously you voted for it, as long as you're confident that that will be...they will come to the table, and I'm sure they would, and you've got something on the record. I am too. I just wanted to kind of have a little discussion. But just for the record, I didn't want any (inaudible) like I'm against this. I'm going to vote for it, and I just thought you did a good job explaining it to the rest of the us, and an overfunded pension that they're going to add an early retirement benefit, and can live with that. Thank you, Mr. President. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Gay. Are there additional members requesting to speak? Seeing none, Senator Synowiecki, you're recognized to close. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. I just want to thank Senator Gay because it gave us an opportunity to explicitly put on record what I fully intended to put on record. This comes before you, this early retirement option for the judges, basically because of two reasons: one, the plan is sufficiently funded--it's actually overfunded at this point; secondly, it gave us, I thought, an opportunity to have an agreement in place that should this legislative body and the Retirement Committee be confronted with having to mitigate, actuarially, the plan, that the members' contributions will be on the table and will be part of the discussion. Thank you. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the closing. The question before the body is, shall AM2600 be adopted to LB1147? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1147]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Synowiecki's amendment. [LB1147]

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PRESIDENT SHEEHY: AM2600 is adopted. [LB1147]

CLERK: Senator White would move to amend with AM2574. (Legislative Journal page 1208.) [LB1147]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM2574. [LB1147]

SENATOR WHITE: Thank you, Mr. Lieutenant Governor. May I yield for a moment Senator Synowiecki some of my opening time? I would move to suspend the rules. [LB1147]

PRESIDENT SHEEHY: Senator Synowiecki. [LB1147]

SENATOR SYNOWIECKI: Mr. Lieutenant Governor, I'd motion to suspend the rules for the amendment. [LB1147]

PRESIDENT SHEEHY: Senator White and Senator Synowiecki, could you come forward? Senator Synowiecki, you are recognized to open on your request for a suspension of rules,... [LB1147]

SENATOR SYNOWIECKI: Thank you,.... [LB1147]

PRESIDENT SHEEHY: ...Rule 5, Section 15, for consideration. [LB1147]

SENATOR SYNOWIECKI: That's correct, Mr. Lieutenant Governor; Rule 5, Section 15. We don't mean to be overdramatic here, but here's the situation. Rule 5, Section 15, indicates that any bill proposing a structural change which impacts the benefits or funding status provided under a public retirement plan or any bill proposing the creation of a new public retirement plan shall be introduced only during the first ten days of a 90-day session. Senator White, because of events that occurred at the Public Employees Retirement Board subsequent to that time frame which is mentioned within the rules, brought this bill during the Second Session. Appropriately so. Therefore, we need to suspend the rules so that we could take up Senator White's amendment because of events that have occurred subsequent to the first ten days of the First Session of the Legislature. So I would ask that you adopt the rule suspension motion so that Senator White's bill can be taken up under the rules pursuant to this body. Thank you. [LB1147]

PRESIDENT SHEEHY: Thank you. Thank you, Senator Synowiecki. You have heard the opening on the request for rule suspension. Members, what we are working on is Rule 5, Section 15(a). There has been an actuarial study completed. Members wishing to speak, Senator Erdman, you're recognized. [LB1147]

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SENATOR ERDMAN: Thank you, Mr. President and members. Again, it needs to be clarified what the motion is, but the way that it's been explained by the president and by Senator Synowiecki is correct. Pursuant to Rule 5, Section 15, commencing with the 1997 Legislative Session, any bill proposing a structural change which impacts the benefits of funding of a public retirement plan has to be introduced within the first ten days of the 90-day session. That is (a) of that rule. The reason that that's there, practically, is to allow for the types of retirement plans and changes that are introduced, to be introduced in that first year, and then in the interim an actuarial study is completed for then consideration in the next legislative session. Senator White introduced LB968. He didn't have an actuarial study, but since the introduction of the bill there has been one completed. If you repeal this section you're saying that we wouldn't need an actuarial study. We do, so you only need to repeal (a). The bill was introduced this year, not last year. All other provisions of the rules have been complied with. We need to vote to suspend this rule, this Section 15(a), to allow for the consideration of Senator White's amendment, and I believe the amendment was advanced from the committee without any opposition. But there has been an actuarial study done. All other rules have been complied with except the bill was introduced this year instead of last year. That's simply what this rule suspension would allow us to do, is to consider this amendment this year because of when it was introduced. Thank you, Mr. President. [LB1147 LB968]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Additional members requesting to speak? Seeing none, Senator Synowiecki, you're recognized to close on your motion for rule suspension. [LB1147]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Senator Erdman is absolutely correct. He summarized it very well. It gets back to what Senator Gay was talking about, the need for an actuarial study before we improve any benefits to our state plans. An actuarial study has been completed, but because of the situation, Senator White was not able to introduce this bill within the time frame of the rules because events had not taken place until during the interim. So with that, though, an actuarial study has subsequently been provided and is available for your review. And all other rules are abided by in this situation except for the bill introduction part. The actuarial study is available. It has been completed. I would recommend that we suspend the rules so that we can take up Senator White's amendment appropriately. Thank you. [LB1147]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the closing. The question before the body is on the motion to suspension of rules. All those in favor vote yea; opposed, nay. This does require 30 votes. Please record, Mr. Clerk. [LB1147]

CLERK: 35 ayes, 0 nays, Mr. President, on the suspension. [LB1147]

PRESIDENT SHEEHY: The suspension is adopted. Senator White, you're recognized

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to open on AM2574. [LB1147]

SENATOR WHITE: Thank you, Mr. President. Thank you, my colleagues, for that indulgence on suspending the rules. I want to particularly thank Senator Heidemann who reminded me of this necessity, and Senator Erdman who truly understands the rules. I appreciate both their professional courtesy and their collegial nature on this. This...the underlying point of this amendment is actually lawsuit prevention. What occurred years ago is Omaha Public Schools had a separate retirement system from the rest of Nebraska public schools. At one point they were functionally joined, and in the process of that, NPERS has taken over the obligation of interpreting a lot of the various provisions. A number of teachers coming out of the Omaha Public Schools, under the rules then existing, retired early. They're entitled to certain payments under the rules as they then existed. In 2002, NPERS...or between 2002 and 2003, NPERS changed their interpretation of the rules, taking away benefits which could run as much \$100 a month of more, to some of the people who were entitled to them under the rules as they existed, and, in fact, as NPERS had interpreted and applied them for a number of years. At that point in time the people who were injured by that asked for administrative remedies, worked with NPERS, tried to get the Attorney General's involvement done, and did not want to file a lawsuit at that point. They didn't get satisfaction. They then asked us to straighten the situation out, given that they thought that the Legislature would be a more efficient and less expensive method of handling it. Senator Gay, very courteously asked why this wasn't done at General File. I just asked Senator Synowiecki. It's my understanding, one of the reasons, Senator Gay, we were trying to get different things out, but also we didn't have what we thought was a definitive analysis and fiscal statement that we could come to the floor with. This will cost approximately \$130,000. Let me read the exact amount. After this bill is passed...after this bill is passed it would add \$136,868 from the General Fund and \$11,200 from the School Expense Fund for fiscal year 2008-2009, and \$136,868 from the General Fund for fiscal 2009-10 for the Public Employees Retirement Board. It's my opinion that if a lawsuit were filed, we would lose, flat out. One of the things that the courts look at in any contract is, how did the parties behave under it for a long period of time. The fact is, that for a long period of time the state of Nebraska and NPERS paid these amounts. People retired under the representation that they would be paid these amounts, and we paid them. Then we changed our mind and changed the interpretation. It seems to me that when people retire in good faith on an understanding of what they're entitled to, we should honor that. And it also, I believe, given past history with which I'm pretty familiar in this area, that the courts would rule we are obligated as a matter of law in any event. This amendment, if added, will correct an injustice. It will also save the state considerable amounts of money in litigation expenses, and it will restore to people who retired in good faith, on our word, the benefits we had promised them. Therefore I ask your support. I want to again thank my colleagues, particularly Senator Heidemann and Senator Erdman, for their courtesy. Thank you. [LB1147]

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PRESIDENT SHEEHY: Thank you, Senator White. You've heard the opening of AM2574 to LB1147. The floor is open for discussion. Are there members requesting to speak? Seeing none, Senator White, you're recognized to close. Senator White waives closing. The question before the body is on the adoption of AM2574 to LB1147. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1147]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator White's amendment. [LB1147]

PRESIDENT SHEEHY: AM2574 is adopted. [LB1147]

CLERK: I have nothing further on the bill, Senator McGill. [LB1147]

PRESIDENT SHEEHY: Senator McGill. [LB1147]

SENATOR MCGILL: Mr. President, I move LB1147 to E&R for engrossing. [LB1147]

PRESIDENT SHEEHY: You've all heard the motion. All those in favor say aye. Opposed, nay. LB1147 advances. [LB1147]

CLERK: Mr. President, the next bill, LB1001. Senator McGill, I have Enrollment and Review amendments, first of all. (ER8188, Legislative Journal page 954.) [LB1001]

PRESIDENT SHEEHY: Senator McGill. [LB1001]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB1001]

PRESIDENT SHEEHY: You've heard the motion on the adoption of E&R amendments. All those in favor say aye. Opposed, nay. They are adopted. [LB1001]

CLERK: Senator White would move to amend AM2632. (Legislative Journal page 1241.) [LB1001]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM2632. [LB1001]

SENATOR WHITE: Thank you, Mr. President. Let me remind the members of LB1001 and what it is. This is a bill that we took up that is designed to provide a fund for any electrical utility or group of utilities that wish to participate. They are not required to participate. What it allows is that they take up to 5 percent of the sales tax that they collect from the sale of electricity. It goes back into the state. They match it, and at that point the state would remit it to them. The money then would be under their direction and use to create different projects that would allow the utilities to try to reduce consumption in their areas. Consumption could be reduced by simple matters of

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providing caulking and weather stripping, and could be replacing windows, could be any energy-saving method they choose, could be different lighting. And they would have the ability to spend it inside of their districts for the purposes of the act, pretty much at their discretion. This adds a number of advantages. Number one, as we know, there is a crisis among many of our citizens on their ability to pay for heating. This particular project would be limited to 150 percent of federal income poverty level. And we discussed it, as Senator Nelson, I recall, pointed out to me, it would not be exclusively limited, but in large part it would be limited to older people on fixed incomes who own their home and then retire. Young people going on low-income in small towns where the homes are cheaper could probably also qualify. The utilities would reach savings on this particular bill because they can save a substantial amount of electricity that they do not have to pay to generate again. Environmentalists like it because it reduces the pollution, carbon burden, and mercury poisoning and other issues from the burning of fossil fuel to generate electricity and other fuels. Home builders are under a lot of pressure right now, carpenters, and subcontractors. This allows a substantial amount of money to be put together and then larger contracts let that will allow those various contractors to go put people back to work, improving the housing stock in the state. One of the things we discussed about was that most of the housing involved is in older areas, but not exclusively, because older areas have the older homes. The amendments in this have been recommended by the Department of Revenue, and the department that will then administer this in order to clarify the bill and make it easier to administer. I will go through those for the benefit of the body, briefly. On page 2, line 14, of the bill, a comma would be inserted after a nonprofit...after the comma you would insert, a nonprofit corporation organized for the purpose of furnishing electrical services. This was added at the suggestion of the Nebraska Rural Electric Association. Electric cooperatives are formed under two different sections of statute, and this language includes all electric co-ops as eligible entities in line with the original intent of the bill, which, of course, is that any entity involved in the sale of electricity in the state could participate by making these benefits available to their customers. The next one, on page 3, line 3, you would strike "Any" and insert "For time periods after July 1, 2007, any"; and strike beginning with "The" in line 12 through line 13. This change was added at the suggestion of the Department of Revenue. It is to add a date certain, which reduces the fiscal impact by preventing entities from reaching too far back into the past, thereby controlling what our exposure is. And then there are series of technical amendments that were added at the suggestion of the Department of Revenue to clear up issues with regard to implementing new programs. These include a statement that "The eligible entity shall certify to the department the amount of money to be distributed from the applicable subfund of the Energy Conservation Improvement Fund for payments of the energy conservation grants approved in subsection (2) of this section. Requests for distribution may be filed no more frequently than monthly. The department shall distribute money only to the eligible entity." And then in line 11 after "to" you would insert "administer a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act or to"; and then you would strike, beginning with "under" line 12

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through "Act" in line 13. Again, these are to make sure the Department of Revenue can expend the money and pay the money but not do it too frequently, no more than monthly. And then also the final technical change is on page 8, line 16, after "made" insert "or made during the same calendar year as such determination is made." And this was added after discussions with contractors, home builders, and other affected industries, to streamline the process of complying with the bill. One of the other advantages in this, in addition to the environmental advantage, the saving of the construction costs of new generating facilities, the putting to work of people in the hard-pressed home industry, home building and repair industry, is that too often our elderly are victimized by unscrupulous people who come through, claiming to be contractors. They sell them, quote, home improvements to allow these folks to stay in their home. They take their money; they leave. And they often leave them with now improvements, and sometimes with liens on their property. As a result, many of our elderly no longer trust anybody who would threaten their home, which is often their only asset left, and certainly their only significant asset, and therefore this allows the eligible entity, the electrical co-op, the power generating facility, to actually administer this. They will actually contract with the contractors. They will guarantee the work. They will pay the bills. That way those elderly who need the service the most will not be subject to liens, failure to pay, substandard work, inappropriate work, unnecessary work, etcetera. One of the points that I would like to remind the body, this will help us keep elderly in their homes. That will save us money. One of our most frightening growth areas, of course, with my generation, the baby boomers coming into their sixties and seventies, is the cost of nursing home. This will have a direct relationship to keeping the elderly in their homes and saving us all taxpayers substantial sums of money. I once again ask for your support. I appreciate your courtesy. I will try to answer any questions if I can. I know Senator Stuthman had some on another bill that was added into it. I'd be happy to address those, as well, should he have any. And with the Chair's permission, I would yield the remainder of this time to address such questions should Senator Stuthman have them. [LB1001]

PRESIDENT SHEEHY: Senator Stuthman, 2 minutes 20 seconds. [LB1001]

SENATOR STUTHMAN: Thank you, Senator White, and thank you, Lieutenant Governor. Yes, I did have some questions on this bill, as I did raise some questions on General File. And it was the fact of we have not allowed the Contractor Registration Act to take place yet. That has not been enacted. We don't know what has happened there. And in this bill there is LB1175, which is amended into the bill, and that is the contractor registration portion of it to change the income tax withholding for the contract registrations. And I do notice that there was one proponent on the bill and that was Senator Tom White, and there was the opponents were the Association of General Contractors, the State Home Builders, and the Nebraska Chamber of Commerce. Can you tell me what the reason these people opposed the bill on the original hearing? [LB1001 LB1175]

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PRESIDENT SHEEHY: Senator White, would you yield? [LB1001]

SENATOR WHITE: Yes, thank you. I cannot tell you what was in their minds, Senator Stuthman. I can give the body the history of this bill. The provision that you are talking about was a separate bill that I introduced at the behest of the Department of Revenue. The Department of Revenue, Commissioner Ewald, Cathy Lang, asked me to introduce that bill to fix a hole in our tax structure. [LB1001]

PRESIDENT SHEEHY: One minute. [LB1001]

SENATOR WHITE: Unfortunately, a number of contractors, independent contractors, were calling themselves that in order to avoid properly withholding taxes and paying them. It is not the contractor registration bill. This is a bill that came out of the administration's request to fix a loophole in the withholding that was costing us over a million dollars a year. And because I had introduced that and I had indicated that the energy conservation bill would be my priority, the Revenue Committee asked if they could be joined together, and there were as part of the Revenue Committee. Now why did the Homeowners Construction Association and the others oppose that? I assume they opposed it because they did not want to have the obligation of withholding for their subcontractors, if in fact they were. But since that time, Senator Stuthman, substantially extensive negotiations... [LB1001]

PRESIDENT SHEEHY: Time, Senator. Senator Stuthman, you may continue on your time. [LB1001]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. And I will continue and engage in the conversation with Senator White. The thing I am concerned with, and, yes, it possibly came and I will say that I will believe that part of it, that the Department of Revenue did feel that there was not enough withholding taxes being held from these independent contractors. But we have not allowed the Contractor Registration Act to take place yet, that they would all be registered, if they're a contractor and employee people, and they register, and that they could find the source of the people that are not withholding for income tax and state taxes purposes. If we would have allowed that to take place, would have that been the duty of the Department of Revenue to hopefully get that withholding that should have been addressed? Because we...that was one of the main issues of the Contractor Registration Act. Do you feel that that was one of the main issues, or was that immaterial? [LB1001]

PRESIDENT SHEEHY: Senator White, would you yield? [LB1001]

SENATOR WHITE: Absolutely. A couple points, Senator Stuthman, and thank you for these questions. First of all, I have spoken to my legislative aide, Ian Russell, and

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understand there have been a number of meetings, and right now we just spoke to Justin Brady, the lobbyist. The Home Builders are fine with this bill as it is and they actually support it. A number of contractors contacted me throughout, and told me they were sick of competing against people who were not properly withholding or were hiring, for example, illegal labor, here illegally, and they were not paying taxes. And they were losing out, the law-abiding were losing out to those who would violate the laws. What this bill provides and one of the changes we made to accommodate, the vast majority of contractors who are law-abiding was, for example, it's very easy to obey. At this point, all they have to do is check the Web site or call a number to verify that the person who represents themselves as an independent contractor is registered, and then they have no obligation whatsoever to withhold. If the entity who is contracting them, for example, if I'm a general and you were a brick layer, I would just get on the Web site and check, or I'd call the Department of Revenue. If you show up as registered, I absolutely have no obligation during the duration of that contract or the rest of that year on projects I worked with you, to withhold from you. If you are not registered, you can either register or I can withhold at that point in time. And so industry supports this bill; they support what's in it. It does not...it's not a contractor registration bill in the sense that we had last year. It is simply a technical ability to allow the Department of Revenue the tools they need to collect taxes from the people who are legally avoiding it, and wrongfully and unfairly competing with our law-abiding contractors. [LB1001]

SENATOR STUTHMAN: Thank you, Senator White. But I think the same issues that you just spoke of were the issues that were brought up when we adopted the Contractor Registration Act. The contractors, you know, were concerned about being not able to bid accordingly because someone was coming in and not paying the taxes of the employees, and they would undercut them on bids and projects like that. Those were the issues that we addressed when we put the Contractor Registration Act in place. And we have that in place right now. So, I mean, I think that is taken care of there. I just think we're trying duplicate something that we haven't had enough time to see whether it works already or not. That is a concern of mine. I've had some contractors say that it's going to add additional bookwork... [LB1001]

PRESIDENT SHEEHY: One minute. [LB1001]

SENATOR STUTHMAN: ...to the bookkeeping people of independent contractors that just employ a very few people. I just feel that I wish we could have just debated this bill as itself. I'm a little bit concerned of tacking it onto a bill that I do support as far as the original bill of it is, is that the energy saving and giving people the opportunity to upgrade their homes and make them more energy efficient. Thank you, Lieutenant Governor. [LB1001]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator White. You're recognized. [LB1001]

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SENATOR WHITE: Thank you, Mr. President. Senator Stuthman, I understand your concern, and I do appreciate it. The Department of Revenue however, again asked for this bill. The registration came out of the Business and Labor and out of the Department of Labor issue. The Department of Revenue had a concern, and the concern was twofold. Number one, we were not collecting all the tax revenue we're justly owed, and that's always a concern. But second, they were getting complaints from a number of contractors who flat out were coming to them and saying, my competitors are violating the law; they are hiring people that aren't really independent contractors, and those people aren't even paying taxes, so they're paying them substantially less because they'll come in, they'll work a job site, they won't pay taxes, and now I've got to go out and bid against them, and you're driving me, the law-abiding contractor, out of business; I'm sick of it and I want a level playing field. The Department of Revenue then brought this to us. Again, the nature of the beast, in the short session, Senator Stuthman, the Revenue Committee asked that they be joined together, and I agree. I agreed they were both important and so we put them in together. And I can tell you that while there may be some contractors who object to this, their organizations, the professional business organizations uniformly support this now. We can talk to you about the various groups we have met with and worked with. We have sworn to them we'd make it easy to obey. And most of them, the individuals in my district that I have talked to over and over again, people like concrete contract subcontractors and others who I won't name out of privacy issues, have come to me and asked in gratitude that they can now know when they actually have employees and treat them like employees, they're not going to be at the competitive disadvantage they were because they obeyed the law. As a result, I ask the members to support both amendments and then the bill in question. [LB1001]

PRESIDENT SHEEHY: Thank you, Senator White. Senator Synowiecki, you're recognized. [LB1001]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. To kind of expand on Senator White's explanation, I do this for the benefit for Senator Stuthman, the Contractor Registration Act was an act that expanded the scope of the Contractor Registration Act, but that is under the purview of the Department of Labor. And the Department of Labor enforces, if you will, the provisions of the Contractor Registration Act. I think what Senator White brings us, we can differentiate a bit in that this comes from the Department of Revenue relative to withholding and those sorts of issues. The Contractor Registration Act and the enforcement thereof resides with the Department of Labor, and I think you're talking about two different issues relative to Senator White's bill and the contractor registration bill that we, in fact, passed earlier this year. So I think that's a clear delineation that needs to be made. I think Senator White just made it in his last speech. And for Senator Stuthman's benefit, that there is a clear delineation between the issue that Senator White brings to the table and the issues that the Contractor Registration Act brought to the table. Thank you. [LB1001]

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PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Seeing...Senator Stuthman. [LB1001]

SENATOR STUTHMAN: Thank you, Lieutenant Governor and members of the body. I would like to engage in a little more conversation with Senator White. [LB1001]

PRESIDENT SHEEHY: Senator White, would you yield? [LB1001]

SENATOR WHITE: Certainly, Mr. President. [LB1001]

SENATOR STUTHMAN: Senator White, as was stated by yourself and Senator Synowiecki, that this was something from the Department of Revenue. [LB1001]

SENATOR WHITE: Correct. [LB1001]

SENATOR STUTHMAN: And I have been just thinking, now, did the Department of Revenue feels that there's probably withholding tax dollars that should be coming to the state? Can you tell me, is there...? What would be the fiscal impact? Are they anticipating maybe there's \$2 million out there, \$1 million out there, that will be generated or will be policed so that it comes to the Department of Revenue? [LB1001]

SENATOR WHITE: Well, yes, Senator Stuthman, they do, and we went through this in General, and I can't remember a specific. My recollection, and it is a recollection, was the positive impact fiscally on this was \$1.6 million, and it's one of the reasons I, of course, agreed to it. I mean, one, because the Department of Revenue wanted it and its important, but also it reduces the cost, the combined cost of the positive, the energy conservation aspect of the bill. [LB1001]

SENATOR STUTHMAN: So in other words, can you tell me what would be the fiscal note on the energy conservation portion of it? [LB1001]

SENATOR WHITE: My recollection, Senator, was about \$4.3 million was the estimate, but that assumes that every entity in the state participates fully, and that's not going to happen. [LB1001]

SENATOR STUTHMAN: So we could say, Senator White, that there is a possibility that it could. There's a fiscal note of a possibility of \$3 million or \$4 million to satisfy the energy conservation part of it, and then this amendment to it of LB1175 would hopefully generate \$1.5 million. So that the two combined together, then there's not nearly the fiscal impact? That it would only be maybe a \$1 million fiscal impact as far as the appropriations is concerned? Would that be correct? [LB1001 LB1175]

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SENATOR WHITE: Senator Stuthman, I have to correct myself. Ian Russell just advised me that they reduced down what they think the revenues would be on this to approximately \$250,000 to \$300,000 a year. They don't know exactly. So what had been in General File, the \$1.3 million to \$1.6 million benefit, has been reduced now because they think maybe they'll only get \$250,000 or \$300,000 (inaudible). [LB1001]

SENATOR STUTHMAN: But in other words, the...let's say \$350,000 impact that the revenue would be coming in, but the fiscal note as far as LB1001 is concerned could be in the amount of \$3 million to \$4 million? [LB1001]

SENATOR WHITE: Yes. If everybody participated 100 percent, and that will be years out, I mean, because it will take them time: one, to collect it; two, to fill out and then get the money in. And that is, as again as I've said, if every entity participated 100 percent to the full amount across the board. And at that point that fiscal number seemed high, and, in fact, OPPD indicated they believed, given the total amount of power sold subject to sales tax, it was, in fact, substantially higher than they thought it would be, in reality. [LB1001]

SENATOR STUTHMAN: Okay. Thank you, Senator White, for your information, and thank you, Lieutenant Governor. [LB1001]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Thank you, Senator White. Seeing no additional lights on, Senator White, you are recognized to close. Senator White waives closing. The question before the body is on the adoption of AM2632 to LB1001. All those in favor vote yea; opposed, nay. Senator White, you're recognized. [LB1001]

SENATOR WHITE: Yes, Mr. President. I would ask for a...wait a second if I may have a moment. Since Senator Rogert is being so very deliberate, perhaps he would like to be responsible for a call of the house, Mr. President. [LB1001]

PRESIDENT SHEEHY: Please record, Mr. Clerk. [LB1001]

CLERK: 25 ayes, 1 nay, Mr. President, on the amendment. [LB1001]

PRESIDENT SHEEHY: AM2632 is adopted. [LB1001]

CLERK: I have nothing further on the bill, Senator McGill. [LB1001]

PRESIDENT SHEEHY: Senator McGill. [LB1001]

SENATOR MCGILL: Mr. President, I move LB1001 to E&R for engrossing. [LB1001]

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PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1001 advances. [LB1001]

CLERK: LB1001A, Mr. President. I have no E&Rs. Senator White would move to amend. AM2424, Senator. (Legislative Journal page 1012.) [LB1001A]

PRESIDENT SHEEHY: Senator White, you're recognized to open on AM2424. [LB1001A]

SENATOR WHITE: Yes, your Honor...Mr. President. (Laughter) Back in court already. This is just the amendments to the A bill to reflect the changes already discussed with Senator Stuthman. [LB1001A]

PRESIDENT SHEEHY: Thank you, Senator White. You've heard the opening of AM2424 to LB1001A. Are there members requesting to speak? Seeing none, Senator White, you're recognized to close. Senator White waives closing. The question before the body is on the adoption of AM2424 to LB1001A. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1001A]

CLERK: 26 ayes, 0 nays, on adoption of Senator White's amendment. [LB1001A]

PRESIDENT SHEEHY: AM2424 is adopted. [LB1001A]

CLERK: I have nothing further on the bill, Mr. President. [LB1001A]

PRESIDENT SHEEHY: Senator McGill. [LB1001A]

SENATOR MCGILL: Mr. President, I move LB1001A to E&R for engrossing. [LB1001A]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. LB1001A advances. Mr. Clerk, do you have items for the record? [LB1001A]

CLERK: I do, Mr. President. Enrollment and Review reports LB245 and LB245A to Select File. An amendment to be printed: Senator Ashford to LB754. That's all that I have, Mr. President. (Legislative Journal pages 1268-1269.) [LB245 LB245A LB754]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Members, we will now move to agenda items at the 6:00 p.m. General File time. Mr. Clerk, first item.

CLERK: Mr. President, LB983, a bill by Senator Cornett. (Read title.) The bill was introduced on January 15, referred to Revenue, advanced to General File. There are committee amendments, Mr. President. (AM2320, Legislative Journal page 938.)

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[LB983]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Cornett, you're recognized to open on LB983. [LB983]

SENATOR CORNETT: Thank you, Mr. Lieutenant Governor and members of the body. Why does Nebraska have a charitable tax credit? Every year, \$5.2 billion is transferred in Nebraska from one generation to the next. Much of this is transferred out of Nebraska to states that heirs reside in. Most of it is lost to federal estate tax, and this is especially devastating in our rural areas. In 2005 this Legislature chose to provide an incentive for Nebraskans to include in their estate planning gifts for permanent endowments like local community foundations, for which they would receive a tax credit. In 2006 we amended this law to three things: to allow the taxpayer to receive both the federal and state charitable deduction and LB28 credit; cut the credit percentage in half from 30 percent for individual contributions to 15 percent, and from 20 percent for corporations to 10 percent; and to reduce the maximum credit from \$10,000 to \$5,000. These last two provisions, severe cuts in the credits, were done because the fiscal note estimated that the cost of the 2005 bill, which was amended before it went into effect, was \$2.5 million per year and the estimated cost of the 2006 bill was \$3.75 million for tax year 2007, and \$3.8 million for 2008. These fiscal notes were generally overestimated and the cuts to the credits severely limited the new law's effectiveness in tax year 2006. The first year of the new law, the cost was not \$3.7 million--it was \$102,470. There were 107 filings for the credit, but only 30 were allowed. Still, the new law incited \$3.3 million in contributions to permanent endowments. Why were these estimates so far off? Many, many tax preparers were not aware of the new law. The reduction to credits were such that no corporations filed for them. Three-fourths of the filings were deficient in documentation or understanding of the new law. The Department of Revenue had no historical data to provide anything other than the most conservative, thus most costly, estimate of the new law. Why do we need LB983? I have been a supporter of this law since its inception. I want it to work as it was intended in 2005. I want Nebraska to make irrevocable gifts to their community foundations and community nonprofits. I want corporations to share their profits with the community. This law was carried on the books at \$3,749,000 in the department's report to the Forecasting Board in October. Of course the actual revenue loss was only \$102,470. The change was made and anything we do this year will have its own projected cost. The fiscal note estimates that the revenue loss this fiscal year would be \$1 million; next year it would be \$3.5 million. I introduced the bill with a \$5 million cap. The Revenue Committee has cut this cap back to \$3.5 million, still less than what we estimated for this fiscal year. I did this so there would be no open-ended cost possibilities. We know this will not cost more than \$3.5 million in any year. What does LB983 do? A maximum annual credit of \$10,000 with 5-year carryforward, a 50 percent credit for outright gifts from C corporations, a 50 percent credit for present value of irrevocable plan gifts of the individuals and S corporations, and a 25 percent credit for outright gifts from individuals and S

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corporations with a maximum annual credit of \$5,000. Committee amendments make up the application for the tax mandatory cap of \$3.5 million in total credits, as I mentioned earlier, and an extension of the sunset from January 1, 2016. During the public hearing, we had seven people testify in support, numerous letters were submitted in favor, and there were no opponents or testifiers in a neutral capacity. Creighton University College of Business conducted a study on LB983 by two of their graduate students. They studied similar legislation that has been in effect in Iowa and Montana, finding that the tax credits have resulted in an exponential increase in new gifts to endowments. Neither of these states have shown a concern for the potential loss in tax revenue. In fact, Iowa has increased its allowable credit for 2008 due to the high demand for tax credits. Last year, charitable gifts totalled \$3.35 million with only \$102,000 in tax credits given. With the credit amounts restored, the \$3.5 million cap should generate a minimum of \$13.8 million in credit...gifts to our permanent endowments. If the experience of 2007 is extrapolated, it should be substantially more. I would like to thank my colleagues on the Revenue Committee for their work on this bill and their vote of support. I would also like to thank Senator Pankonin for choosing LB983 as his priority bill and I would return...yield the remainder of my time to him. [LB983]

SENATOR LANGEMEIER PRESIDING [LB983]

SENATOR LANGEMEIER: Senator Pankonin, 5 minutes. [LB983]

SENATOR PANKONIN: Mr. President, members of the body, I want to tell you why I made LB983 my priority bill this year. I believe that this concept described by Senator Cornett has the potential to leverage a wealth transfer to Nebraskans to Nebraska nonprofits that can provide a continuing stream of endowed earnings to benefit Nebraska's communities, local school and educational foundations, healthcare, the environment, and other worthy nonprofits year after year. With full utilization, this bill could raise as much as \$112 million in new Nebraska endowment funds for charitable organizations. At a 5 percent payout rate on such permanent endowments, nonprofits would then have \$5.6 million annually to help our state. This stream of funds can improve Nebraska's quality of life for so many communities and the citizens long after all of us are gone from this institution. Another aspect that I like about this bill is that it helps both rural and urban areas. This is Nebraskans helping Nebraskans and we have many, many examples of past successes all across our state. Please review the handouts. I especially want to notate the Omaha World-Herald Nebraska excellence editorial published March 18, 2008, that tells of the outstanding success of the Lexington, Nebraska, Community Foundation and also honors the service of our colleague, Senator John Wightman, who has served on his local community foundation board for over 25 years. Unlike some other economic incentive measures we consider, this bill uses state tax credits to help secure and multiply Nebraska private donations for public purpose, nonprofits and their endowments in every size community and every

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geographic corner of our state. This bill is a continuation and enhancement of a program already in place--the Nebraska charitable tax credit. We would appreciate your support. Thank you. [LB983]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. As the Clerk has stated, there are Revenue Committee amendments. Senator Janssen, as Chair of that committee, you are recognized to open on the committee amendments. [LB983]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. The committee amendment makes the application of the tax credit mandatory. As a result, only those tax credits that individuals apply for will be granted. The committee amendment also reduces the limit from \$5 million to \$3.5 million, as Senator Cornett has stated. With that, I ask for your support of the committee amendments. Thank you. [LB983]

SENATOR LANGEMEIER: Thank you, Senator Janssen. You have heard the opening on LB983 and the committee amendments, AM2320. The floor is now open for discussion. Those wishing to speak: we have Senator Gay, Senator Raikes, and Senator Karpisek. Senator Gay, you're recognized. [LB983]

SENATOR GAY: Thank you, Mr. President. I rise in support of the amendment and the bill and commend those who brought it to the body. When I look at this bill, and I've been following this even prior to me coming into the Legislature, it's a good bill and this makes it better. One of the things on the amendment, by extending it out, putting a cap but extending the deadline is important as well. Because when you're talking to somebody about a charitable gift, it's not just like you go in and talk about it and they say sure, I'll do that. Many of these things, they call it planned giving just for that reason. Senator Cornett made references that, you know, it takes a while for these things to get out through the accounting profession, through the financial planning profession of the things that are available to them because there's a lot of changes always going on. By doing this though, we're saying to somebody, you can be talking to them in 2008, 2009, the gift may not come for a few years down the road but you got to start planning for it. And so to have a longer planning period is very important. Many of the nonprofits now that are in the state are doing some great deeds. And I read through the handouts, they're very good handouts and I would encourage you to do that. But you know, many nonprofits are struggling, too, as we get into times where things are getting a little tougher and you're going and having your normal fund-raising going on to maintain your annual gifts that you're giving or whatever it may be, whatever your nonprofit is supporting. But more and more are starting to create an endowment or looking into it as we talk about the baby boomer...well, the generation, as that wealth transfer is taking place that's alluded to here. It doesn't happen overnight. So you're seeing these things happening. We're doing it proactive. By passing this, you'd be taking a proactive stance of saying yeah, we want to help you out, we want to make that incentive that you will

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help your community, community foundation or whatever your charitable organization would be. So looking forward to hearing the discussion on this. I'm a supporter of it and I hope you will support it as well. Thank you, Mr. President. [LB983]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Raikes, you're recognized. [LB983]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I oppose this bill and I have opposed, I guess to be consistent in this one instance, I opposed it when it was first introduced. There have been efforts at least once, and maybe this is the second time, to try to correct it. And as near as I can tell, it has not worked. The basic idea is that you take money out of the appropriations process. You take money that is not a donation, it's a tax obligation. You take it out of the appropriations process and eventually it ends up in a process for distribution that may have nothing to do certainly with what the state deems a need in terms of its imposing the tax structure. I oppose it mostly because of that idea. I don't think that's a good idea. I think we should carefully guard the funds, if you will, that we collect from people involuntarily for tax payments, and that we should direct those funds to the needs of the state and the needs of the public as thereby determined. To simply say that we're going to take part of that money out of the appropriations process and allocate it however in local communities is not, in my view, sound policy. Does that mean that I don't think you should have community foundations, or that if you do have them they never do good work? Absolutely not. In fact, some of the information going around indicates exactly the opposite. There have been some very good things done by community foundations and they have been done without a program like this, at least, that works. So you don't need this, in my view. I think also, I don't have the information to hand out to you, that actually the evidence is that giving to local community foundations for support of projects within the community has not lagged behind in Nebraska, nor has it lagged behind in terms of any sort of a trend. So this is a program that is afoul of what I think is good public policy regarding allocation of tax dollars. It, I believe, is not needed in terms of a tax incentive program. And also I would add that it doesn't work, or it has not worked. The argument is made that the fiscal note is incorrect because...basically because the program hasn't worked before. I will tell you that if you adopt this, which is giving more and bigger tax credits to more entities for the same thing, you will in fact reduce receipts available to the state for other purposes. I would urge you that this is not a good time to do something like that. So I oppose this measure. Thank you. [LB983]

SENATOR LANGEMEIER: Thank you, Senator Raikes. Senator Karpisek, you're recognized. [LB983]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I rise in support of the bill and the amendment. I'm also on a community foundation board and I've seen the good things that can happen. We built a million and a half dollar swimming

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pool that would not have been built otherwise. The money would have probably never even come to the community if it would not have been for the foundation. That money can be put into a separate account, line-itemed, to only be used for what the donor wants. They are a little slow getting going. Maybe people don't trust them as well as they should. That's been the case for us. But it has worked wonderfully. Mr. Yost has come down, explained things to us, helped us out. He has been overly helpful when the community hasn't even maybe grabbed on the way they should have. I do not agree with Senator Raikes that this is not the time to do it. I say now is the time to try to keep some of that money local, try to keep some of these small towns vibrant, try to give them something that they wouldn't get otherwise. They've got lids, we're trying to cut them every time we turn around. We've just smacked the schools upside the head this year. Now is the exact time to try to help them out a little bit. I realize that we're not doing so well as a state but I don't think we're doing that poorly. This money was raised locally and I think it should stay locally to go what the people want it to go for. Senator Raikes also said that you don't need this to do these sort of things. That's true; you probably don't need them, but it sure makes it a lot easier, a lot cleaner, a lot better, especially in some of our very small towns. We've got towns under 1,000 people that have very good foundations working. I don't think that we want to yank the rug out from under them. Let them have some things. Let them try to bring people to rural parts of the state. It's what we've talked about many times in this Chamber. I think it's a wonderful bill. I want to thank Senator Cornett and Senator Pankonin for bringing them forward. I will definitely support the bills and I hope that you do, too. Thank you, Mr. President. [LB983]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Synowiecki, you're recognized. [LB983]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier, members. I, too, want to extend my thanks and appreciation to both the senators for bringing the bill and for the prioritization. And I can understand and appreciate Senator Raikes's concern relative to the tax receipts in the program, but also understand that these type of incentive bills, I feel very strongly, mitigate state cost. Numerous community-based services...we rely heavily as a state, we rely heavily upon the heavy lifting of a lot of nonprofit organizations, whether that be in developmental disabilities, behavioral health, other programs such as food pantries and these sorts of services. We depend heavily upon that and these organization garner some of these resources when we incentivize this activity and help mitigate our direct state cost. Other areas I've seen in my community in the area of the arts and the museums that profoundly impact life enrichment for individuals within a community. I think it's a very key ingredient to every community relative to life enrichment. I see no problem incentivizing gifts to local community foundations. I think it has profound benefit for our citizens and I think ultimately it does mitigate direct state cost. I'm going to support both the Revenue Committee amendment and the underlying bill. Thank you, Senator Langemeier. [LB983]

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SENATOR LANGEMEIER: Thank you, Senator Synowiecki. Senator Wightman, you're recognized. [LB983]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I rise in support of this. I do have some questions perhaps with regard to the amount of the credit that will be received and a little bit about the gifts that may qualify. So if Senator Cornett would yield to some questions, I would like to engage in some conversation. [LB983]

SENATOR LANGEMEIER: Senator Cornett, would you yield to a question? [LB983]

SENATOR CORNETT: I would be happy to. [LB983]

SENATOR WIGHTMAN: At the present time, Senator Cornett, would outright gifts made to a foundation qualify as planned giving? [LB983]

SENATOR CORNETT: I don't believe so. I'd have to look at what the old law is. I know what the new one does. I can't remember exactly. [LB983]

SENATOR WIGHTMAN: So it would have to be planned giving done through some sort of a charitable remainder trust or a number of other schemes that are--and I shouldn't use the word "schemes" (laugh)--other methods that would be used. Is that correct? [LB983]

SENATOR CORNETT: I just spoke with legal counsel. Under the old bill, which is currently in effect, individual contributions could be direct but corporations could not, corporate donations. [LB983]

SENATOR WIGHTMAN: So if an individual made a... [LB983]

SENATOR CORNETT: Oh, I'm sorry. The other way around. Pardon me. [LB983]

SENATOR WIGHTMAN: Okay. A corporation could make an outright gift but an individual could not make one that would qualify? [LB983]

SENATOR CORNETT: Correct. It would be a 10 percent credit for outright gifts from corporations currently. [LB983]

SENATOR WIGHTMAN: But if an individual wanted to make a contribution of, say, \$20,000 to a community foundation, that would not qualify for the credit at all? [LB983]

SENATOR CORNETT: No, it would not. It would have to be a planned gift. [LB983]

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SENATOR WIGHTMAN: Okay. Is there a particular reason that we completely rule out outright contributions? [LB983]

SENATOR CORNETT: No. I don't know of any reason why we did. That is why we have corrected that in the current language. [LB983]

SENATOR WIGHTMAN: You say you...I thought you said you did not correct it, that only a corporate gift, outright gift would qualify and that an individual's outright gift would not. [LB983]

SENATOR CORNETT: I'm sorry, sir. I thought you meant the bill that we passed last year. No, we have not corrected that and there is no reason why, other than this was modeled off of what other states have done in regards to contributions. [LB983]

SENATOR WIGHTMAN: Okay. I have some real questions as to why...it seems to me that a gift of...a present gift of whatever the amount to a foundation probably does more good than the planned giving down the road. So I do have some questions with regard to that. Again, I generally support the concept. We have had a very successful foundation as set forth in the World-Herald article in Lexington. It's been in existence for about 25 years. We have supported numerous facilities, made grants for scholarships. We've done \$2 million grants. We've used it to incentivize work within the community or facilities within the community. And I think it's a great idea. Again, I'm not sure with regard to the percentage that's allowed. I have someone here that's going to answer the question so I'll turn my light on again and try to answer some of these questions. Thank you. [LB983]

PRESIDENT SHEEHY PRESIDING [LB983]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Pankonin, you're recognized. [LB983]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I want to talk about the concept a little more of why I think LB983 is a bill that's worth strong consideration. What we're trying to do is increase Nebraska endowments. Endowments are funds that the investment income comes off of these funds and can become a perpetual source of income for nonprofits--for a hospital foundation, for a local school foundation, for a community foundation--and do a lot of good things. So that's what the endgame is here, is trying to secure private money, to get people to give, and then put in these permanent foundation endowments that bring out the income year after year. And to answer a little bit what Senator Wightman was talking about, under this bill, enhancement of an existing law, people could make direct contributions besides the planned gifts that he described. So if someone gave \$20,000, they could potentially get

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a \$5,000 tax credit against their tax bill with the state of Nebraska. And I think the reason that's important, besides some of these other...the sub S corporations, which a lot of your local banks are sub S and a lot of other partnerships of all kinds, real estate and whatever, that could get these deductions now. When I say deductions, tax credits versus deductions. But what that allows these community foundations and small school foundations is to go to some folks and say, for this initial investment in this endowment for your community, we want to get your money, but there is some tax advantages for you and a tax credit that starts out and gives you a chance to "incentify" those folks to, besides the fact that they want to help their communities, to get started on this path. As far as some of the items that Senator Raikes talked about, I actually got interested in the community foundation event. The first one I went to was in Nebraska City. And his brother had just given money to the community foundations. And Senator Raikes, that was the first time I got interested in this concept, was your brother Jeff had given, and you were there. And the other story I remember about that night that his younger brother Jeff told, who had a tremendous career with Microsoft--he's about ready to retire but ended up being the number three executive at Microsoft--he told a story about his older brother Ron who, when he left Apple to go to Microsoft to be one of the first people to join Bill Gates, his older brother said that's a poor choice, why you leaving that going company to go to Microsoft? So see, Senator Raikes doesn't always have all the answers. That was the second thing I remembered about that night. The first one was the good that community foundations can do. The second one was, you know, that Ron Raikes is a really smart guy but sometimes he doesn't have all the answers. (Laughter) Okay. The reason we're interested in this concept now--it's already on the books, we're trying to enhance it--is there is a significant wealth transfer taking place. Senator Wightman would know, from being a local attorney, that there are a lot of folks in a position that can give to these and a lot of these people are not outwardly wealthy from the standpoint of their homes or cars or whatever, but they've accumulated assets, they want to help their community, and this is a tool to get them started, to "incentify" them to come to the fore to help their local school foundation, their community foundation, their hospital foundation. And so many communities in Nebraska have started these. And by making...doing this now, this wealth transfer, can cause these endowments to go on with perpetual... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR PANKONIN: ...income for those foundations. That makes a big difference in those communities. And as I stated in my part of the opening, Senator Wightman has got great experience in Lexington, Nebraska, how that community foundation does a lot of things that maybe the local government can't do. And I think that's...and not only just bricks and mortar. Oftentimes they're doing scholarships. I know in my legislative district in Nebraska City, the community foundation is giving scholarships to people that are in the midpoint of their lives and now they have maybe a chance to go back and get some education. Part of the agreement or the idea is that they will stay in that community but

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maybe they had examples of people that wanted to get their nursing degree and then stay in the community. So they're giving scholarships to folks like that. That not only builds their community with bricks and mortar, but also the people involved that can enhance their lives, enhance the community as well. So that's some of the things these foundations are doing. Just another couple quick examples: I was at the... [LB983]

PRESIDENT SHEEHY: Time, Senator. [LB983]

SENATOR PANKONIN: I'll be back. Thank you. [LB983]

PRESIDENT SHEEHY: Members requesting to speak: Senator Carlson, followed by Senator Wightman and Senator Cornett. Senator Carlson, you're recognized. [LB983]

SENATOR CARLSON: Mr. President and members of the Legislature, I'll yield my time to Senator Pankonin and I'll press my light again. [LB983]

PRESIDENT SHEEHY: Senator Pankonin, 4:50. [LB983]

SENATOR PANKONIN: Thank you, Senator Carlson. An example: I went to their educational session the other day, the Nebraska Commission for the Blind and Visually Impaired. That group was there and they get some state support. But when I was asked what my priority bill was and I told them it was this concept, this bill, LB983, they said good, we get money from foundations for some of our work for visually impaired citizens and those foundations are, besides the state funding, are very important to our work. And that's a worthwhile purpose to try to build those endowments because for those folks, that works goes on and it's important. I noticed in one of the e-mails we got here a few minutes ago, it was from the Girl Scouts and they have a foundation. And that is the type of work that these groups do that are in almost every community of any size in our state and every region, and also do great work in the urban areas as well. And we are actually taking in less revenue if this is utilized because it's...they're tax credits. But I think the benefits outweigh because of the money that goes to these nonprofits. Many of them do work that maybe in past years the government did do to help people in their communities, but can't afford to do anymore. And the significant thing is that these endowments go on, they're perpetual. The income, properly managed, the income can help these foundations and nonprofits participate in the community's efforts, whether it's brick and mortar or to help folks as time goes on. So that is part of the concept of what we're about, what we're trying to do with this bill, is to make it easier to go to people and encourage them to give to these foundations by using the tax credits that are available. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Thank you, Senator Carlson. Senator Wightman, you're recognized. [LB983]

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SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I did get some of the answers that I was asking about previously. So I do want to continue discussing a little bit about how the community foundation has worked for Lexington, Nebraska. It has been a great thing. It has a history, 25 years, as set forth in the World-Herald editorial. But it's done far more than that. It's allowed us to do things in the community that we would never have done, could never have done except for the foundation. But it's allowed us to get passage of some bond issues by incentivizing those bond issues and it's made Lexington a lot more progressive community than it would have been without it. One of the first things we did, we were looking at a new school, a lot of additions to almost every school in town when IBP moved to Lexington. We tried on two or three occasions to get a bond issue passed. And finally we hit upon the idea of using the Lexington foundation and finally we got to where we committed a million dollar contribution to that. We couldn't...we then used a combination of city sales tax to support some of that school issue, including an auditorium that would have community-based so that we could use a city sales tax to do it. Also used it at the same time and on the same bond issue for a water park. I think those issues would not have passed if we could not have incentivized it with gifts to the foundation. But going on and adding a little bit to what Senator Pankonin said, I think there are truly millions of dollars in every community. And much of that is going to pass outside of that community. It's going to pass the heirs that are out of state. With the wealth that we're accumulating in some areas of this country, much of this is going to be given to a foundation probably that the children are more interested in maybe in New York City or St. Louis or California. If we could just capture 5 or 10 percent of that worth and keep it in the local community, I think we will have done a tremendous thing. And I think that can be done through this idea of planned giving under LB983. I think that we have a real opportunity to do it. But I do think that much of this wealth is going to pass out of our state if we don't take advantage of a situation such as we're presented with LB983. I know Senator Raikes has raised questions with regard to taking this much money out of the revenue stream. It's going to affect appropriation bills. But I think it's going to create...it's going to be the salvation of some communities, I think, in the next 20 to 50 years, even starting immediately. And I think if we can incentivize these gifts that allow these communities outstate or wherever they may be to remain vibrant, that's very important to these communities. We're providing, many times, aid to these communities in the first place and we're worried about how we're going to maintain, particularly the ones in greater Nebraska, how we're going to maintain those communities. And I think we have an opportunity here to perpetuate some of these communities, to make them a healthy and vibrant place for people to live. They're going to be able to provide amenities. [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR WIGHTMAN: They're going to be able to provide better schools. So I do urge your support. As I say, if I have any questions at all, it might be with regard to the amount of the credit on the 25 and the 50 percent credit. So that may be a question,

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another question I have, and I won't ask anybody in particular right now. And that is, will you still get the deduction that you would get for a charitable deduction at both the federal and the state? Obviously you're going to get it at the federal level. But if you pile the credit on top of the state deduction, then maybe you almost enriched it too much. But with that, I'll close my remarks for now and I may be back. Thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Mr. Clerk, you have an amendment to the committee amendment? [LB983]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend the committee amendments with FA261. (Legislative Journal page 1269.) [LB983]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA261. [LB983]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, if it's on your gadget, I will nevertheless tell you what it would do. If you look at the committee amendment--and we have so few people here because the others are eating, this is one of those kind of bills that everybody is going to support. They're not hearing the discussion. It seems like such a good thing so they're automatically going to support it. But I agree with Senator Raikes. I'm not in favor of letting these people who want to appear to be good people give money if you bribe them. If you don't bribe them, they're not going to give it. These are not openhanded, good people. You're saying that you, Senator Wightman, will not have to pay a portion of your income tax and Ernie can make it up in order that you can give to somebody over here and then you look like a good guy and they're going to write you up in the newspaper and I still got to pay my taxes. If these are good people, if this is charity, which they are not and this is not, this bill should not be here. There were all kind of representations made when this idea first came out and I believe I opposed it, and I oppose it now. You're extending the sunset, as it's called, and you're going to keep doing it because these are the well-heeled rich people that you always are concerned about, that you're always interested in. I'd like to ask Senator Pankonin a question or two. [LB983]

PRESIDENT SHEEHY: Senator Pankonin, would you yield? [LB983]

SENATOR PANKONIN: Of course. [LB983]

SENATOR CHAMBERS: Senator Pankonin, since you and Senator Cornett are partners in crime on this, I will dub you the Bonnie and Clyde of this bill. I'd like to ask you a question. What is the minimum amount that somebody can contribute and still benefit from this bill? Mr. President, let my time run. I need to check something. Mr. President, I am going to withdraw that amendment as drafted and do it differently. And it

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would be less confusing and more straightforward. So at this point I'm withdrawing that amendment. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers. FA261 is withdrawn. We'll return to floor discussion on Revenue Committee amendment, AM2320. Members requesting to speak are Senator Cornett, followed by Senator Carlson, Senator Heidemann, and Senator Wightman. Senator Cornett. [LB983]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. I want to apologize. I misunderstood Senator Wightman's question earlier in regards to direct gifts from individuals. If you look at page 5 of the bill, Section 5, it covers direct gifts from individuals. I thought he was referring to what we did under the current law and got the two confused. That was my mistake. I want to stress how important these exemptions are. A number of people have talked about and we have testimony in how they would like to endow in Nebraska. One of them is Jim Nissen from Lincoln and I'm going to read what he has said. It seemed appropriate to create an endowment fund for future maintenance of our hometown museum in Wayne. Ginger and I hope our gift will motivate others in the spirit of giving and support for important institutions in this state. As a banker in Lincoln and a farm kid from Wayne, I know that Nebraska charitable tax credits can make an impact in communities of all sizes. Senator Chambers is talking about how we're giving breaks to people that want to look like good people or rich people and why are we giving them breaks. I don't really...I'm not really concerned with how the people look when they donate. I'm concerned about what the amount they donate and what they generate with this. And the community foundations do so much in our communities that I would very much urge the body to support this bill and the Revenue Committee amendment, which does put a cap on and reduces it down from the original cap of \$5 million to \$3.5 million. And I would yield my time to Senator Pankonin. I believe that he was getting answers to a question from Senator Chambers. [LB983]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LB983]

SENATOR CHAMBERS: Yes, I will. [LB983]

SENATOR PANKONIN: Right? Isn't that where we were at? You were asking me a question. [LB983]

SENATOR CHAMBERS: Yes. [LB983]

SENATOR PANKONIN: And I think the question was, what is the minimum amount...let me phrase what I think you were asking. What's the minimum amount you could give and theoretically get this tax credit, right? [LB983]

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SENATOR CHAMBERS: Yes. [LB983]

SENATOR PANKONIN: If you go to page 5 of the green copy of the bill, in Section 5, it says, "A resident individual shall be allowed a credit against the income tax due under the Nebraska Revenue Act of 1967 in an amount equal to 25 percent of any contribution made by the individual." So in thinking about the 25 percent, if you gave 4 cents and went through the paperwork to apply for this, you could get a penny off of your tax bill. [LB983]

SENATOR CHAMBERS: Now who is contemplated in this bill the way it's drafted? Anybody can get the benefit of this if they have some income tax liability. [LB983]

SENATOR PANKONIN: That's true. [LB983]

SENATOR CHAMBERS: We are not contemplating people with a small enough liability so that they would get a few pennies or even a few dollars. Those are not the people in contemplation, are they? [LB983]

SENATOR PANKONIN: Well, to build endowments, probably not. But I think for a lot of these foundations they would be happy...I mean, you asked me the other day in the hall about a \$100 contribution and I think for a lot of these small-town endowments and foundations, they would be happy to have a \$100 contribution and you would get a \$25 tax credit. [LB983]

SENATOR CHAMBERS: Certainly anybody is glad to get something. But I want to get at the purpose of this bill. For the maximum... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CHAMBERS: ...based on the committee amendment, is the cumulative maximum available for all contributions \$3.5 million, or is that the maximum that one person could get? [LB983]

SENATOR PANKONIN: No. If you look at that same section about one person can get, they're limited to a \$5,000 tax credit with some carryforward provisions which we can talk about in more detail. So that would mean a \$20,000 with a 25 percent credit would be the maximum that they could get. So the \$3.5 million is in the aggregate. If it was fully utilized by many, many people and there were a lot of these tax credits, that would be the upper end of the state revenue that would be affected. [LB983]

SENATOR CHAMBERS: So in other words, no matter how large a contribution is made, \$5,000 is the maximum tax credit that a person could get? [LB983]

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SENATOR PANKONIN: On a cash-type event, that's true. Now there is some... [LB983]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Chambers, Senator Pankonin, Senator Cornett. Senator Carlson, you're recognized. [LB983]

SENATOR CARLSON: Mr. President and members of the Legislature, I certainly am in support of LB983 and the amendment, AM2320. And Senator Chambers, there are people that are willing to give and really not as concerned about tax relief as you might think. And one of the things that I think is so important about this whole concept is that in community foundation work, people give willingly. They don't have to give. There's not a mandatory contribution like it is to our state tax coffers. And basically, people don't give for a tax credit. People give because they believe in a cause or in an organization. And that group or organization is there for the public good, doing good things for good people in the community. The whole thing is voluntary, it's not mandatory, and that's one of the best things about charitable giving, I believe, in our state and in our country. In my community, we have a strong community foundation that is strong because many, many people have given small and large amounts of money over the years so that it's there to provide good services for people in the community. We have a fine arts building that's paid for, seats 850 people. It's the finest structure between Lincoln and Denver in a community of 6,000 people. We have a new YMCA that is almost paid for, all of it by donations, by good-hearted individuals. And we have many other good investments in the community that come about as a result of generous people giving to the community foundation. And they gave because they appreciate what the community has meant to them, not because of a tax break. Now I'm going to speak out of the other side of my mouth because when there are tax breaks to giving, people don't mind taking advantage of those. And so I'd like to address a question or two to Senator Pankonin. [LB983]

PRESIDENT SHEEHY: Senator Pankonin, would you yield to questions from Senator Carlson? [LB983]

SENATOR PANKONIN: Yes, Senator Carlson. [LB983]

SENATOR CARLSON: Now I know you've been listening exactly to what I said. I'd like you to repeat what I just said... [LB983]

SENATOR PANKONIN: Thank you, thank you. [LB983]

SENATOR CARLSON: Senator Pankonin, if I give money to our community foundation, do I get a federal deduction for the full amount of my gift for that year? [LB983]

SENATOR PANKONIN: On a cash contribution? [LB983]

SENATOR CARLSON: Yes, \$1,000 contribution. [LB983]

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SENATOR PANKONIN: Yes. [LB983]

SENATOR CARLSON: Okay. And I think I know the answer to this, but I'm just trying to maybe help some others that might be listening. So I give \$1,000, I get \$1,000 deduction off my federal income tax? [LB983]

SENATOR PANKONIN: Right. [LB983]

SENATOR CARLSON: Do I get \$1,000 deduction off my state income tax? [LB983]

SENATOR PANKONIN: No. [LB983]

SENATOR CARLSON: It's one or the other? [LB983]

SENATOR PANKONIN: I think that's correct. [LB983]

SENATOR CARLSON: But I would get, out of the \$1,000 contribution, I'd get a \$250 credit on my state tax return? [LB983]

SENATOR PANKONIN: Yes. [LB983]

SENATOR CARLSON: Okay. Thank you. [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CARLSON: I think it's important to be clear on that. And there's nothing wrong with taking those deductions, because the end result is that that money is used for people in the community. It's for the public good, it's done because people want to, not because they have to. And if we had a lot more of this in our communities and in our country, we wouldn't have as many state obligations on our taxes. And so whatever we can encourage people to do on this, it ends up being a good thing for our communities. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Mr. Clerk, you have amendment to the committee amendment filed on your desk. [LB983]

ASSISTANT CLERK: Mr. President, Senator Chambers would offer FA262 to the committee amendments. (Legislative Journal page 1269.) [LB983]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on FA262. [LB983]

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SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I want to thank Senator Cornett and committee counsel for assisting me in having this amendment drafted properly. Rather than attach what I was offering to existing language in the committee amendment and just extending it, it was suggested that a number five be added and this language set out by itself so it's clear what it would do. If you turn to page 9 in the green bill and strike the new language in lines 6 through 8, you will know what my amendment does. And that language says, "except that any credits earned prior to such date may be carried forward as provided in such sections." The date they're talking about is the sunset date. I would like to ask Senator Pankonin...oh, is Senator Cornett...the reason I had asked Senator Pankonin earlier the questions, Senator Cornett was in consultation. But now that she is free, I would like to ask her a question or two. [LB983]

PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Chambers? [LB983]

SENATOR CORNETT: Yes. [LB983]

SENATOR CHAMBERS: Senator Cornett, the date that is being mentioned in the lines that I'm striking would be the new sunset date of 2010...I mean 2016. Is that correct? [LB983]

SENATOR CORNETT: Yes, it is. [LB983]

SENATOR CHAMBERS: And if you do something prior, if you earn credits prior to 2016, those credits will be carried forward despite the fact that the sunset is reached. Is that correct? [LB983]

SENATOR CORNETT: Correct. If you have enough...if you've donated enough to have credits carried forward. [LB983]

SENATOR CHAMBERS: Is it for you to decide to carry them forward or would they carry forward only if that maximum \$3.5 million had been reached? [LB983]

SENATOR CORNETT: They would carry forward based on the amount of donation that you had made and your taxable income. So if you were eligible for a \$10,000 tax credit for your donation but you did not have enough income the first year, second year, third year, you would carry forward until you had reached that amount of deduction that you had earned. [LB983]

SENATOR CHAMBERS: And what's the maximum number of years it could carry forward? [LB983]

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SENATOR CORNETT: Five. [LB983]

SENATOR CHAMBERS: Five years. [LB983]

SENATOR CORNETT: Yes. [LB983]

SENATOR CHAMBERS: Now if I donated enough to get \$20,000, no matter how much I had donated, that is the maximum that I'd be able to get. And let's just say that I did not have enough liability because I was finding other ways to not have that full tax liability so that that one year, even though I made a big donation, I didn't have enough tax liability to claim the full \$20,000 which would be the maximum. I, as wealthy as I might be, would have 5 years total to eat up that full \$20,000. [LB983]

SENATOR CORNETT: Correct. [LB983]

SENATOR CHAMBERS: So the program would continue to function for as much as five years after the sunset date, which is 2016. [LB983]

SENATOR CORNETT: Correct. [LB983]

SENATOR CHAMBERS: There would be a carryover until 2021. [LB983]

SENATOR CORNETT: Yes. [LB983]

SENATOR CHAMBERS: And there is no way to know how many people might be in that category of needing to carry this forward. Correct? [LB983]

SENATOR CORNETT: No...well, no. [LB983]

SENATOR CHAMBERS: Would that \$3.5 million be for each year? [LB983]

SENATOR CORNETT: Each year until 2016 and then after that depending on how ever much was carried forward from the contributors in 2017, '18, '19, '20, and '21. [LB983]

SENATOR CHAMBERS: And what was the reason they gave for needing to extend this sunset? [LB983]

SENATOR CORNETT: We wanted to extend the sunset out to allow the program to have longer time to work and come into play because it has had a slow start over the past couple of legislative years since we've enacted it. [LB983]

SENATOR CHAMBERS: But at the time this was brought, we were given to believe that by the time this sunset was reached, more money was going to have been donated than

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actually turned out to be the case and not...go ahead. [LB983]

SENATOR CORNETT: Oh, I'm sorry. Go ahead. [LB983]

SENATOR CHAMBERS: Go ahead. [LB983]

SENATOR CORNETT: We actually had, even though we only had \$102,000 in tax credits last year, we had \$3.3 million invested. [LB983]

SENATOR CHAMBERS: Oh, you mean donated? [LB983]

SENATOR CORNETT: Donated, yes. [LB983]

SENATOR CHAMBERS: That's not what they thought it would be. They thought more than that was going to have been given, didn't they? [LB983]

SENATOR CORNETT: Yes, they did. [LB983]

SENATOR CHAMBERS: But as I listen to the conversation, these rich people and their consultants and the investment, those who assist them, accountants, didn't know that this windfall was available. And that's why these good-hearted rich people were not giving as much as they'll give now that they know that they can be underwritten. Bluntly put, is that what we're looking at? [LB983]

SENATOR CORNETT: Part of it also was the fact that there were a number of applications that were denied because they were not filed correctly, they did not know how to file for the deductions. Partially they did not know that it was available. That is why we are working on improving language to make it more readily accessible. It was also written, the current law, to where it was not worth the time or effort of corporations to donate. And we worked on the language on that. [LB983]

SENATOR CHAMBERS: Were the corporations, were they donating nevertheless or they were not donating? [LB983]

SENATOR CORNETT: I do not believe they were donating. [LB983]

SENATOR CHAMBERS: But when you told them we'll sweeten it and give you this underwriting, then the corporations said they'll give? [LB983]

SENATOR CORNETT: Actually we spoke to no corporations. We looked at what other states have done to encourage corporations and individuals to donate. [LB983]

SENATOR CHAMBERS: If you're going to extend the cutoff date, when that date comes

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it will be extended again, won't it? Isn't it the plan to extend it again so that this goes on in perpetuity? If it's working, why is it going to be cut off? In other words, why not just be honest and do away with one of these dates? Because I've seen this happen and it gives the people, it gives the legislators the idea that this is temporary when it's not temporary at all. It's designed to be permanent. That's my view. Now here's the question I'm asking you: why not just do away with a sunset altogether and make it honest? [LB983]

SENATOR CORNETT: Senator Chambers, I wouldn't be opposed to that. [LB983]

SENATOR CHAMBERS: Now why did they just extend it? They thought that they needed to do that or they might not be able to get it done? [LB983]

SENATOR CORNETT: Basically that's what the we...the testimony we heard is that they wanted to have a time because of the two years from when it was originally enacted and the amount that it was underutilized. Bringing it forward to be able to have it utilized what they were originally intending. [LB983]

SENATOR CHAMBERS: But if this sweetener would cause contributors to give more money, an attempt would be made to extend that sunset so that money would keep coming in. Isn't that true? The ones receiving it are not going to want to give it up. When you're addicted and you need your fix, you don't want people coming up and saying cold turkey, you don't get anymore. [LB983]

SENATOR CORNETT: I agree with you. [LB983]

SENATOR CHAMBERS: Why don't we strike the language that I'm asking be stricken and just let these people give? And if they don't have enough tax liability but they had enough money to donate, then let them get what they can and that's it. [LB983]

SENATOR CORNETT: I wouldn't have a problem with that. [LB983]

SENATOR CHAMBERS: So then you'll agree with my amendment? [LB983]

SENATOR CORNETT: Your amendment is to strike the sunset? [LB983]

SENATOR CHAMBERS: No, it's to strike this language about you carrying credits forward. [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CORNETT: If they cannot carry the credits forward, they are not going to donate as much if they do not have the income. That I would not agree with. I thought

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you were referring to the sunset. [LB983]

SENATOR CHAMBERS: You would want to strike the sunset, then you wouldn't need this language about carrying forward, would you? [LB983]

SENATOR CORNETT: No. [LB983]

SENATOR CHAMBERS: Greed is driving you, isn't it, Senator Cornett? (Laughter) Greed. You're greedy, aren't you? And you feel like Gekko said, greed is good. [LB983]

SENATOR CORNETT: I would just say, I am greedy for the community foundations because they're doing so much for our state. [LB983]

SENATOR CHAMBERS: So you agree with Gekko that greed is good? [LB983]

SENATOR CORNETT: Actually, did you ever read any of Plato's discourses on greed? [LB983]

SENATOR CHAMBERS: I think Plato was one of the most worthless people you can read because he dealt with nonexistent republics and everything he put was up in the air and had no connection of reality whatsoever. He didn't even think there was such a thing as a real chair, but there's a concept of chairness. So Senator Harms is sitting in chairness but not a chair. Plato... [LB983]

PRESIDENT SHEEHY: Time, Senator. [LB983]

SENATOR CHAMBERS: ...was insane. Thank you, Mr. President. (Laugh) [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening on FA262 to Revenue Committee amendment, AM2320. Members requesting to speak: Senator Heidemann, followed by Senator Wightman, Senator Chambers, and Senator Carlson. Senator Heidemann, you're recognized. [LB983]

SENATOR HEIDEMANN: Thank you, Lieutenant Governor, fellow members of the body. As I started looking into this bill and listening to the debate, I listened to Senator Carlson at first, and he said a lot of things that I agree with. At first I couldn't quite understand...figure out what side of the bill he was going to come down on. But I agree that there are a lot of people that give to community foundations and they do it because they have a good heart. And I encourage that, but I don't know if we need this bill and I actually...I'm not supporting this bill. I'll lay it out there right away. There are a lot of good things that happen across Nebraska because people give. And I can look in my district about water parks being built, libraries being built, stadiums. We have a football stadium that got AstroTurf at a high school which, you know, in my district, just doesn't

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happen; it's the only one. Good things happen and it goes past that because people give. But I believe people are going to give because they got a good heart. And for that, I'm okay. So if they're going to give, then is this incentive or is this a reward for people that were going to give anyway? And that's a question that I ask myself. I'm going to go on probably in another capacity just a little bit as Appropriations Chair at this time. And we've had a little bit more of an interesting year this year than we did last year. We...and you've heard me say this speech before. I haven't for a while. But we're in a little bit more difficult times. And as we look about next year coming up, it's going to be probably tougher yet. I'm going to commend my committee members right now for the job that we've done this year. As we realize that we wasn't going to have the money this year to spend, our committee members stood up and time after time after time after time knew that we couldn't fund something and said no. And when we presented our budget, we was still at a deficit of over \$60 million. And I commend the Education Committee. And they did just as tough as work as what we did. There was no doubt about it. And they did things that made me cringe. And I knew what we had to do. It's not always easy doing the right thing though. By everybody working together, we did the right thing and we made a balanced budget. After LB988 passes, which I think it's on Final Reading tomorrow, and even though I might vote no, I believe it's going to pass. And because of that, we will be just barely balanced. And now the question is if we want to stay there. There are a few appropriations bills that are going to pass before us--not a lot, it's not...you know, it's nothing out there that scares me. But the question is if we're going to remain balanced. And that will be up to this body through this floor because that decision is going to be made here. I ask you, as you're making that decision, to remember the tough decisions that have been made before, not only in the appropriations process if we had said no, but the Education Committee, and as we voted on LB988 to try to use it to balance the budget. This bill does have a fiscal impact. [LB983 LB988]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR HEIDEMANN: And not so much on the appropriations side. There is an expenditure of \$19,000 in '08-09 and \$28,000 in '09-10. It's the revenue loss that concerns me. In '08-09 it shows a revenue loss of \$1 million, in '09-10 it shows a revenue loss of \$3.5 million. And that's what concerns me. And as we go through the next nine days, I believe is what we have left, we're going to face some tough, tough decisions. And there are some times that we're going to have to maybe say no to some things that we'd really like to do. But in order to remain balanced we are going to have to make those tough decisions. And I ask you to help me make them. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. Senator Wightman, you're recognized. [LB983]

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SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I have a lot of respect for Senator Chambers, but sometimes I think he brings cynicism to a new level. I think maybe that's what he's done here. He would have us believe that no one gives out of the goodness of their heart if they aren't bribed, and I think that's his word, to make the gift then they aren't interested in making the gift. And I can tell you that's not my experience at Lexington, Nebraska. I doubt if it's the experience that many of you have had with regard to community foundations. So I do think that's an unfair characterization. I still respect his opinion. Maybe not so much on this issue. At any rate, going on, I know that what I'm going to say next probably will make this bill more difficult. I'm going to support this bill at its current level. I would like to see some changes made prior to...on Select File. I do think that by the time we incentivize these gifts to the tune of 25 percent and then they get the tax deduction, which I think they've concluded they do, and that's about 6 percent, that's 31 percent. If they're in a 28, 30 percent bracket, which most of the people who give substantial amounts will be at the federal level, they're going to get about 60 percent. And when we incentivize the gifts that much, then I think maybe Senator Chambers is not as cynical as I would have originally thought. I think we can go overboard. And I would propose at some point--and I'm quite willing this be done on Select--that we make some adjustment for the deduction they receive as far as just a charitable deduction, which it's my understanding they will still get. And so we would recoup probably some of the three and a quarter million that we may have in the second year out. And I think that the 25 percent would be sufficient incentive to encourage people to make these gifts. As far as the fact that we are using some of our revenues, or eliminating some of our revenues would probably be a more correct statement, that doesn't bother me a lot. We're asked to make appropriations to communities. We're asked to fund a lot of the school activities. I think down the road maybe they're going to be able to fund more of these things themselves. What I really like is that we are going to allow these communities to continue to thrive, and I think a lot of them are thriving. Senator Carlson mentioned the facility that they built in Holdrege. We also did a new library that we had a \$1 million grant out of our foundation, were able to build over a \$3 million library that I would invite any of you to come out and see. It's one of the prides of Lexington, Nebraska. But to suggest that these people don't give unless they're bribed is somewhat of an insult to me and I think to many of the people that do give. And so I certainly take issue with those remarks. So I do urge you to support the bill, to probably not support Senator Chambers' amendment. And again, I would like to see some work done on this at Select. I think the deduction and the credit... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR WIGHTMAN: ...that we're talking about probably would be excessive and may cost the state more than it should lose in the way of revenues. Thank you, Mr. President. [LB983]

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PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Chambers, you're recognized. [LB983]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm not trying to hurt the delicate feelings of the "Daddy" Warbucks of the world, these magnates who do some of everything to get any amount of money they can to do anything. They'll cut corners, they hire people to help them not have to pay taxes. I do feel sorry for them. They're delicate, they're sensitive. They probably cry very easily and they eat quiche when nobody is looking. (Laughter) But the fact is this: they are not altruistic. You've got to give them money to get them to give to these good causes. And you all are so mush-headed, in a manner of speaking, and that's the term that they use to describe people who are so easily made to feel that good things are coming from people who have to be bribed to give it. This, based on information that I'm getting, would allow these contributions to be made to religion. And the state is going to underwrite that, in effect. It's one thing to say that religions don't have to pay taxes. We know they're moochers and spongers, Senator Carlson. I know that that church wants me to have to pay money for the streets in front of their churches, to provide street lighting, fire and police protection while they sit up there and rake in money and don't have to pay taxes, don't pay their fair share. And Jesus told them--didn't he, Senator Carlson--when they said pay taxes, ask him a question...I'd like to ask "Parson" Carlson a question, because this really fits and touches on what we're talking about here. [LB983]

PRESIDENT SHEEHY: Senator Carlson, will you yield? [LB983]

SENATOR CARLSON: Yes, I will. [LB983]

SENATOR CHAMBERS: Senator Carlson, did a guy come to Jesus and ask should they pay taxes? Do you remember that? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: And what did Jesus say? [LB983]

SENATOR CARLSON: Render unto Caesar what is Caesar's. [LB983]

SENATOR CHAMBERS: Right. And he got there by saying, give me a coin. And they gave him a coin. And he said, who's face and superscription is on that coin? And the person said, Caesar's. Give to Caesar what's Caesar's. In other words, you religious people, pay your taxes. Senator Carlson, do religious organizations have to pay taxes in this country? [LB983]

SENATOR CARLSON: No, they don't. [LB983]

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SENATOR CHAMBERS: There are some religions that do. Do the Mormons pay taxes? [LB983]

SENATOR CARLSON: Not their church. [LB983]

SENATOR CHAMBERS: Who pays taxes? You don't...are there activities that they carry on that generate money through their church on which they pay taxes, if you know? [LB983]

SENATOR CARLSON: Well, I don't think directly through their church. They certainly own property that makes money and they pay taxes on that. [LB983]

SENATOR CHAMBERS: But there are things where their church derives money and you don't...so you're understanding they don't pay taxes on that? [LB983]

SENATOR CARLSON: Well, to my understanding, nothing that's associated with the church itself would they pay taxes on. They would on other property. [LB983]

SENATOR CHAMBERS: But you're not sure, are you? [LB983]

SENATOR CARLSON: I'm pretty sure. And I'm not trying to defend Mormons. [LB983]

SENATOR CHAMBERS: I know. Did you hear Governor Huckabee say that Jesus is Satan's brother? Did you hear Huckabee... [LB983]

SENATOR CARLSON: Yes, I did. [LB983]

SENATOR CHAMBERS: ...said that that's what the Mormons believe. [LB983]

SENATOR CARLSON: Are you asking me? [LB983]

SENATOR CHAMBERS: Yes, I'm asking you. [LB983]

SENATOR CARLSON: I am not going to speak for any Mormon. You'd have to ask a Mormon, and so would I. [LB983]

SENATOR CHAMBERS: No, did Huckabee say that Jesus was Satan's brother? [LB983]

SENATOR CARLSON: No. He asked Mitt Romney about that. He didn't say it; he asked him. [LB983]

SENATOR CHAMBERS: But it was his opinion that that was the case based on the way

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he framed the question, wasn't it? [LB983]

SENATOR CARLSON: Well, I wouldn't say it was his opinion. He asked the question. He had a right to ask the question. [LB983]

SENATOR CHAMBERS: Okay, thank... [LB983]

SENATOR CARLSON: You are asking me... [LB983]

SENATOR CHAMBERS: Thank you. You're going to temporize and...thank you, Senator Carlson. But if you look at it and go by what's in the "bible" everything that was created...maybe I need Senator Carlson a little bit further, and then I'm going to bring it around to what we're talking about here next time I get to speak. Senator Carlson, is there anything that was created... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CHAMBERS: ...which was not created by the God in whom you believe? [LB983]

SENATOR CARLSON: No. [LB983]

SENATOR CHAMBERS: Does evil exist? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Was it created by God? [LB983]

SENATOR CARLSON: He allows it. [LB983]

SENATOR CHAMBERS: No, don't... [LB983]

SENATOR CARLSON: I know. [LB983]

SENATOR CHAMBERS: All right. [LB983]

SENATOR CARLSON: He allows it. [LB983]

SENATOR CHAMBERS: What did you...is evil here? [LB983]

SENATOR CARLSON: Right here? [LB983]

SENATOR CHAMBERS: Does evil exist in this world? [LB983]

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SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: And you said nothing is created unless it was created by God, correct? Now if evil was... [LB983]

SENATOR CARLSON: I probably did say that. [LB983]

SENATOR CHAMBERS: If evil was created by something other than God, there's another being that can create. And if that being can create, that being is a god. Isn't that true? [LB983]

SENATOR CARLSON: No. [LB983]

SENATOR CHAMBERS: Can a being create if it's not God? Can it bring something out of nothing if it's not God? Then you have to say... [LB983]

SENATOR CARLSON: No, I don't... [LB983]

SENATOR CHAMBERS: ...evil doesn't exist, don't you? [LB983]

SENATOR CARLSON: Evil exists. [LB983]

SENATOR CHAMBERS: Right. And if you read when David was to play the harp for Saul... [LB983]

PRESIDENT SHEEHY: Time, Senator. [LB983]

SENATOR CHAMBERS: ...it said, an evil spirit from God. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers, Senator Carlson. Members requesting to speak: Senator Carlson, followed by Senator Raikes, Senator Pankonin, and Senator Chambers. Senator Carlson. [LB983]

SENATOR CARLSON: Mr. President, members of the Legislature, I am rising opposed to Senator Chambers' amendment. But I'd like to engage in a little conversation with Senator Chambers. [LB983]

PRESIDENT SHEEHY: Senator Chambers, would you yield to Senator Carlson? [LB983]

SENATOR CHAMBERS: Yes, I'd be happy to engage in a colloquy with my esteemed colleague. [LB983]

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SENATOR CARLSON: Senator Chambers... [LB983]

SENATOR CHAMBERS: Yes. [LB983]

SENATOR CARLSON: ...you know something about baseball, don't you? [LB983]

SENATOR CHAMBERS: Not much. I know I don't like it, but I'll try to answer any questions that you ask me. [LB983]

SENATOR CARLSON: Okay. Do you know how far it is between bases in baseball? [LB983]

SENATOR CHAMBERS: No, but I think it's 90 feet from the plate to the pitching mound. [LB983]

SENATOR CARLSON: Well, no, that's a long way. It's 90 feet between bases. [LB983]

SENATOR CHAMBERS: Okay, thanks. I stand corrected and educated. [LB983]

SENATOR CARLSON: And let's suppose that you're a base runner on first base and I'm the pitcher. [LB983]

SENATOR CHAMBERS: Yes. [LB983]

SENATOR CARLSON: I used to be a pitcher. [LB983]

SENATOR CHAMBERS: All right. [LB983]

SENATOR CARLSON: And in baseball, I would come to a stretch position, look over my shoulder at you, and see how...and you know that you can lead off in baseball. You can get off that base. [LB983]

SENATOR CHAMBERS: Yes, yes. [LB983]

SENATOR CARLSON: How far off do you think you could get off on me before I'd pick you off? [LB983]

SENATOR CHAMBERS: I'd get far enough, after having watched you, to know that when I saw you make a move to throw the ball, I could get back to the base before the ball got there. [LB983]

SENATOR CARLSON: Okay. Well, I think you're off-base on this bill. (Laughter)

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[LB983]

SENATOR CHAMBERS: But you can't pick me off. [LB983]

SENATOR CARLSON: And you're getting close to the point of being picked off. (Laughter) And Senator Heidemann, wherever he is, you know, I wasn't trying to deceive you. I don't want to pick you off, but I'm trying to pick off Senator Chambers and Senator Raikes, too, if they don't be careful. (Laughter) In our communities in which we live, and we have good-hearted people that give money, and they give because they believe in their community and they believe in what the community stands for and their community foundation. And there's another thing that happens in communities when people give to a foundation. The foundation uses that money to do good things in the community. There's very little overhead. Now if all that money came into the state coffers as tax money--and we do good things as a state, that's what we're supposed to do. But our overhead is pretty high. And I'm guessing that the taxes saved don't even take care of the difference in overhead. When the communities do good things for people, most of the money reaches those it's supposed to reach. That's not necessarily the same thing with some of the things that we do with dollars at the state level. But we do the best that we can. But again, I am opposed to Senator Chambers' amendment and am supportive of the bill. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Raikes, you're recognized. [LB983]

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. I support Senator Chambers' amendment, although I don't think it goes far enough. Let me mention a couple other things. There's been a number of conversations about...or a number of comments in the conversation about the good things done by community foundations. I don't dispute that. The question is the division of function here. I doubt if you're going to go out and solicit a lot of contribution to a community foundation with the argument that, look, if you give this money then the government won't have to spend the money. This money will replace receipts we get from either the state or the local government. I don't think that's why people do it. In fact, I think that argument will turn people away. Well, I'm not going to give money to displace money that we've got coming from the government. Point is, state revenue, state receipts have to be used for such things as maintaining roads, maintaining prisons, taking care of schools, hiring teachers. They are not for putting a new roof on the opera house, however advantageous that might be. You need to keep in mind the difference between the uses of these funds. There have been a number of good, valid anecdotes presented about the good things that have been done in community foundations. Keep in mind, they have been done without this. We have progressed to this point with a lot of good works without this. It's not needed. And to make it worse, the credits, the benefits in this bill, I think, can be fairly characterized as obscenely generous. If you make a \$20,000

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planned gift, as I read this thing, the state pays half. Now there's argument against being bribed to make a contribution to the foundation and offense taken at that. But this is what you're doing. I mean, how do you otherwise describe it? The fact is, you honor contributors by allowing them to really make voluntary contributions; by saying that I am contributing because I'm interested and want to be supportive of the community, not because I'm after some sort of a tax break. And I fully understand, as a contributor, that if I'm given a tax break, there will be an important government service that won't be provided. Now I hope it's not here, where I am. I hope it's someplace else. But I'm not so stupid, but what I don't understand, that tax money is not ubiquitous. It's not unending. It has a limit. We should not do this. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Raikes. Senator Pankonin, you're recognized. [LB983]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. Senator Raikes and Senator Chambers have made some...a good argument, Senator Heidemann as well, about this bill. And as Senator Wightman has said, maybe some of the provisions should be looked at as far as the generosity of the so-called tax credits. But I think the thing that we're missing potentially here in the argument and about the...where this is possibly needed is the one that...Senator Wightman had also made this argument, is that some of these folks, if they are not incentivized, the money is going to pass from them to another generation of heirs that are not going to look at these local community foundations which...or groups that we've heard. I think probably a fairly good consensus that there has been a lot of good work done. It might not be public purpose like government does, but it's related and sometimes replaces what government can do. And I think part of the idea behind this bill is that if we don't take advantage of this window and this money and this wealth passes out of our state into other heirs that don't live here, that we will not have our chance to fund these endowments that have perpetual gifts towards these nonprofit charitable organizations, and that we'll lose this opportunity forever. And that's why the timing is important, to try to have this type of approach, to get people to give. Not that...I guess maybe a bribe is to get it started, but I think in many cases if people get started, this is a way to get it, get their practice in place that they want to give. Because first of all, they got some tax credit and then they will follow through and give more, way over what the advantages in this bill or anything that we work on between now and a further round of debate. So I think that's part of the theory that we can't exactly put a number on or a figure on. But if we miss a chance on this opportunity and the money, as Senator Wightman says, goes to other states and other areas, then we won't have a chance. And that's why this is an important approach to try to secure these funds, private money to help the public good. Thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Chambers, followed by Senator Cornett, Senator Fischer, and Senator Loudon. Senator Chambers, this is your third time on FA262. [LB983]

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SENATOR CHAMBERS: I'm aware. Thank you, Mr. President, members of the Legislature. I'd like to ask Senator Pankonin a question. [LB983]

PRESIDENT SHEEHY: Senator Pankonin, would you yield? [LB983]

SENATOR CHAMBERS: Senator Pankonin, this contribution that the person is making can be made to a church, can't it? [LB983]

SENATOR PANKONIN: Well, it would... [LB983]

SENATOR CHAMBERS: It can be made to advance religion, can't it? [LB983]

SENATOR PANKONIN: Well, Senator, it would have to be...it could be a religious organization. They would have to have an endowment. It couldn't just be a church contribution. So a church would not qualify, but if they had a foundation that could be related--and I couldn't think of an example, maybe you can. But that has potential, yes. [LB983]

SENATOR CHAMBERS: But it could be a foundation whose aim is to advance religion. And if it's nonprofit, the donation could be made to that foundation, couldn't it? [LB983]

SENATOR PANKONIN: That is true. [LB983]

SENATOR CHAMBERS: And that would be the state using some money to underwrite and advance the cause of religion, when you come right down to it. Isn't that true? [LB983]

SENATOR PANKONIN: Well, it depends what the purpose of the foundation is. But it could be... [LB983]

SENATOR CHAMBERS: If it's to advance religion and they stated openly and clearly that that's the purpose of it? [LB983]

SENATOR PANKONIN: Some of their foundations may have that as a goal; some may have other goals, like the hospital foundation, or it could... [LB983]

SENATOR CHAMBERS: And if you make that contribution to that foundation that advances religion, that person making that donation gets these tax credits, income tax credits. Isn't that true? [LB983]

SENATOR PANKONIN: Yes. [LB983]

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SENATOR CHAMBERS: Thank you. I'd like to ask Senator Carlson a question or two now. [LB983]

PRESIDENT SHEEHY: Senator Carlson, would you yield to questions? [LB983]

SENATOR CARLSON: Yes, I would. [LB983]

SENATOR CHAMBERS: Senator Carlson, didn't...you believe that there was a Jesus, do you? [LB983]

SENATOR CARLSON: Oh, absolutely. [LB983]

SENATOR CHAMBERS: Do you believe what this Jesus said? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: And you know what this Jesus said based on things in the New Testament? [LB983]

SENATOR CARLSON: I know quite a few things he said. [LB983]

SENATOR CHAMBERS: But it comes from the New Testament. Is that correct? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: And you see the New Testament as the word of God? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Okay. And you think God is the creator of all things? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Now are there any lies in the New Testament? Not where they say the Devil is the father of lies, but where assertions are made in the New Testament which are false. [LB983]

SENATOR CARLSON: No. [LB983]

SENATOR CHAMBERS: All right. Now Jesus said don't do your good works before men because if you do it to be seen of men, you have your reward. Do you remember words of that...to that effect? [LB983]

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SENATOR CARLSON: Yes, I do. [LB983]

SENATOR CHAMBERS: Now these people are doing their good works, and when they make that affirmative step to get that money from the state, they're doing it to be seen of men, aren't they? [LB983]

SENATOR CARLSON: Some are, yes. [LB983]

SENATOR CHAMBERS: And they're not doing it just out of the goodness of their heart? [LB983]

SENATOR CARLSON: Not totally. [LB983]

SENATOR CHAMBERS: This is not the kind of giving that Jesus would have recommended, is it? [LB983]

SENATOR CARLSON: Not in its entirety. [LB983]

SENATOR CHAMBERS: But you want to reward those people whom Jesus would not reward for doing that which they ought to do because they think it's the right thing, correct? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Okay. At least you're being straightforward. Now here's a little rhyme I jotted down. I want to ask you: is this true or false? What is the value to religion when all is said and done? Religion has started many wars but has not stopped a single one. Do you think that's true, religion has started many wars but has not stopped a single war? [LB983]

SENATOR CARLSON: No, I don't think that's true. [LB983]

SENATOR CHAMBERS: Has religion started many wars? [LB983]

SENATOR CARLSON: Religion has, yes. [LB983]

SENATOR CHAMBERS: Name me one war that religion has stopped, that any religion has stopped. [LB983]

SENATOR CARLSON: As I stand here on the spot, I can't specifically name one. [LB983]

SENATOR CHAMBERS: And the Jesus that you said you believe in stated--and the

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reason I put it like that, to make it your belief--said there will be wars and rumors of war from now on. Right? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Okay. And these wars, some of them are going to be started by religion. And you want to contribute some of the states' resources to advance religion. [LB983]

SENATOR CARLSON: Well, there are times when war is appropriate, and we probably have disagreement on that. [LB983]

SENATOR CHAMBERS: Would you be willing to write this language in such a way that any foundation which advances religion, a contribution to that... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CHAMBERS: ...foundation does not qualify for these...the contributor does not qualify for these tax credits? [LB983]

SENATOR CARLSON: No, because we would have a difference of opinion on what advancing religion is. And I don't know that any of us could come to an agreement on that. [LB983]

SENATOR CHAMBERS: Well, if there's a statute that mentions something about advancing education or religion, we say it means the same thing here that it means there, wouldn't we? [LB983]

SENATOR CARLSON: Well, it could be. But that... [LB983]

SENATOR CHAMBERS: This is an uncomfortable discussion for you, isn't it? [LB983]

SENATOR CARLSON: Oh... [LB983]

SENATOR CHAMBERS: Because you want to do one thing to help people get something when in your heart you know that those people should not be rewarded with state money for doing what they're doing, right? [LB983]

PRESIDENT SHEEHY: Time, Senator. [LB983]

SENATOR CHAMBERS: Thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Thank you, Senator Carlson.

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Senator Fischer, you are recognized. [LB983]

SENATOR FISCHER: Thank you, Mr. President and members. I haven't spoken on this bill but I felt the need that I should stand up and say something. I am a member of a local foundation. And in the 43rd District we have a number of foundations. They are all very active in their communities. And as you know, I represent a very rural district so we have small communities that have foundations. And they're very active, they're very involved. And I have heard from a couple people who are members of those foundation boards who support the bill. But my problem is, we're talking, I believe, needs versus wants. I think Senator Raikes and Senator Chambers have hit the nail on the head. Needs versus wants. I can't support this bill. I can't give tax credits to people who are already donating to their local foundations as my family does. I can't give tax credits to people to urge them to donate or to donate more to their local foundations, even though I support that concept. Because to encourage people to give, sometimes you have to give them something, too. But I don't believe it's the place of the state of Nebraska to do that. We made some big cuts in state aid to schools this year. And when we gave...or when we made those cuts in state aid to schools, what we did was ask our property taxpayers in our school districts to pick up the difference. Let's be honest about that. We cut state aid to schools that was certified on February 1. Decisions were made by school districts on their budgets. Now they will learn that they will not be getting that amount in state aid. If they continue with their budget plan, they will be raising property taxes. So we voted for a property tax increase by cutting state aid to schools. But yet, we all feel good tonight about standing up and supporting this bill for community foundations. And we want to give a tax credit, which is revenue from the state of Nebraska, we want to give a tax credit to people who donate to their local foundation. I'm not saying this is a bad bill. I just don't believe it is the place of state government to give up revenue to do this when we are making cuts to other programs, such as aid to education, which I believe is a state responsibility and a state obligation. And that's, I believe, where our first priority should be. Senator Erdman stood up earlier on the floor today and mentioned education as a first priority. We cut it. We raised property taxes when we did that in many districts. I don't think we need to be offering tax credits, which means we're giving state revenue to individuals to contribute to a foundation. Thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Other members wishing to speak on FA262 are Senator Louden, followed by Senator Kruse and Senator Pirsch. Senator Louden, you're recognized. [LB983]

SENATOR LOUDEN: Thank you, Lieutenant Governor and members of the body. As I've listened to the discussion, I would call it, this evening on this bill, I have some questions that I was kind of concerned about. And I was wondering, would Senator Cornett, would she yield to questions, if she would, please? [LB983]

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PRESIDENT SHEEHY: Senator Cornett, would you yield to Senator Louden? [LB983]

SENATOR LOUDEN: Senator Cornett, you're quite familiar with this, I presume, as you've been explaining some of it to them around the Chamber. On this bill, who can donate? I mean, can anyone donate, and is it an individual or a corporation can donate to these funds or a foundation donate to these funds? [LB983]

SENATOR CORNETT: Well, an individual or a corporation can donate, but a foundation probably wouldn't donate to itself. [LB983]

SENATOR LOUDEN: No, but a foundation could donate to another foundation if they so desired. I mean, if you had to set up a foundation to build some type of a library or something like that and you had a large foundation, as some of them are setting up now, where we've had, such as now we've had a lady that set up a large foundation and donated to a museum. That's what I'm wondering, if they would get the tax credit, I guess. Because this is what I'm wondering: when they make these donations, who all is allowed to get the tax credit? Have you had...have you included everyone in here that makes donations to receive the tax credit? [LB983]

SENATOR CORNETT: Senator Louden, if you read the handout that I passed around, it spells out exactly who is eligible for this donation: class C corporations, class S corporations, and individuals. It does not mention foundations, so the direct answer would be no. [LB983]

SENATOR LOUDEN: Okay, thank you. Thanks, Senator Cornett. As I look this over, and you get back into here where these corporations that give the donations, it also mentions that that credit on some of them can be carried back through the shareholders and the partners. So my concern would be some of these huge corporations you have now that are pretty much owned by very few people. When they give large donations, will they be able to use that as a deduction on their income taxes? As I read that, that is some of the new language that has been put into the bill. And so I have a concern about who gets to do the donation and who gets to receive the tax credit. I don't have any problem with legislation that we've had in place for giving away this money and this endowment and receiving some tax credit. I question about carrying it forwards for five years, but I presume the reason that's in there is because you're only going to give \$5 million statewide away at any one time. And I suppose that's the reason you're going to allow it to be carried forwards for five years, if that's what that is, is supposed to be a safety valve in there so that you don't give the whole state treasury away on donations. Some of those I've...when you talk about people donating in these areas and what they built, it isn't always individual donations. A lot of it was estate purposes that people had left in the state to some of these places to build these buildings. And the question is, is how that is handled when you start having some of these deductions that go with it. So I'm somewhat concerned. I think Senator Raikes mentioned about how much of it we

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were going to give away, and they've raised the percentage considerably. And so in there someplace I think... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR LOUDEN: ...we probably would stay with the percentage that was in statutes before. It seemed to work quite well before. And I was trying to come across the idea of why we were increasing or we were being to vote to increase a lot of this to make it a great deal better. If you wanted to just put it so they could have carried it forwards five years and left the statutes like they were, or if you wanted to increase the statutes and they had to do it immediately, or if you wanted to do something different on the \$5 million limitations. So with that, thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Louden. Senator Kruse. [LB983]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand not to comment on the bill, but on two or three matters of our discussion with each other. The first is responding to Senator Chambers in terms of a foundation advancing religion. I've been sitting back here trying to think of any foundation like that, and I know of none. It doesn't mean that I know every one, but certainly church foundations would not do that. Our way of describing that within the trade is that advancing religion is out looking for recruits. Certainly a program to feed the hungry, or more typically to run an orphanage someplace overseas, would make that particular religion look better but it's not done in order to advance the religion, I wouldn't judge. The second comment would be just a friendly aside to Senator Fischer. We didn't cut education. As I would understand it, we were deciding whether to increase education by 17 percent or 9 percent. We never chose to increase it by 17 percent. That wasn't our objective. And we were clearly in an objective of increasing education, and we did increase it by 9 percent. And the other comment I'd make is in terms of what's the purpose of this bill. I would agree with Senator Raikes. It seems a bit rich. But certainly the purpose deserves our attention. The purpose of this, as I understand it, is to prevent out-of-state transfers for Nebraska wealth. We are experiencing a huge drain of wealth from our communities. My small community who everybody is poor there, they don't have any money. And if you don't believe that, ask them. But when the parent dies, the money goes someplace else unless the parent has found a local foundation that can receive some of that. It seems to me of great benefit for us to emphasize the need for our equity to stay in Nebraska. I thank you. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Senator Pirsch, followed by Senator Cornett, Senator Gay, and Senator Aguilar. Senator Pirsch, you're recognized. [LB983]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I do appreciate the conversation, the dialogue that's been going forward with a bill that has

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certain complexities and intricacies. I think it is good to have this dialogue taking place. I appreciate the questions that Senator Wightman, Pankonin, and Fischer, Raikes, and Chambers have been engaging in. And I would yield towards further dialogue, the balance of my time to Senator Chambers if he'd like to continue that dialogue. [LB983]

PRESIDENT SHEEHY: Senator Chambers, you're yielded 4:15. [LB983]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pirsch. Members of the Legislature, sometimes an accord can be reached, and maybe one has. So I want the time to be running while I consult for a few seconds. Mr. President, members of the Legislature, Senator Carlson, I'd like to comment your way. Yes, I'd like you to stand up. [LB983]

PRESIDENT SHEEHY: Would you like him to yield? [LB983]

SENATOR CHAMBERS: I don't like to kick a man when he's down. How much time do I have, Mr. President? [LB983]

PRESIDENT SHEEHY: Three minutes. [LB983]

SENATOR CHAMBERS: And Senator Pankonin, is he...oh, he's gone. That's all right. Senator Carlson, let me say this, and you'll understand. Praise the Lord. And had Senator Pankonin been there, I'd have said, and pass the ammunition. (Laughter) But anyway, let me ask you another question or two, if I may, along the lines that I was going. When King Saul had these mental derangements, they were caused based on the words of the Bible by an evil spirit from God. Now if that's in the Bible and I'm correctly quoting it, do you think that is true or that's a lie? [LB983]

SENATOR CARLSON: Well, God created Satan and Satan is the source of evil. [LB983]

SENATOR CHAMBERS: Now wait a minute. See, this is what I mean about religious people changing the scriptures. If you change one...if you add one jot or one tittle, then your name will be taken out of the book of life, correct? [LB983]

SENATOR CARLSON: That's correct. [LB983]

SENATOR CHAMBERS: All right. Now the book says, an evil spirit from God. I've always said the Devil gets a bad rap. Satan is a scapegoat and religious people won't put the blame, if that's where it is, where it belongs. If the Bible says an evil spirit from God, are you equating God with Satan? [LB983]

SENATOR CARLSON: Oh, no. And I'm agreeing with you, because it says that. [LB983]

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SENATOR CHAMBERS: Okay. So then God sends evil, based on what the Bible said. [LB983]

SENATOR CARLSON: Well, he used an evil spirit on Saul. That's true. (Inaudible)... [LB983]

SENATOR CHAMBERS: And when that evil spirit... [LB983]

SENATOR CARLSON: ...and then he took David, in order to soothe Saul, so the evil spirit would leave him. [LB983]

SENATOR CHAMBERS: Right. [LB983]

SENATOR CARLSON: And that worked. [LB983]

SENATOR CHAMBERS: And it showed how poorly David played music because if it's so bad it'll make an evil spirit flee, then something is wrong. But at any rate... [LB983]

SENATOR CARLSON: On that harp. Okay. [LB983]

SENATOR CHAMBERS: ...I'm kind of adding that. My name will be taken out of the book of life, but it wasn't there anyway. Senator, where would that evil spirit be... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CHAMBERS: ...when it was not in Saul? In order to be sent from God, was that evil spirit residing with God? [LB983]

SENATOR CARLSON: I don't know that. I don't know that, Senator. [LB983]

SENATOR CHAMBERS: Could it have been... [LB983]

SENATOR CARLSON: But a spirit is a spirit, so you and I can't see it. [LB983]

SENATOR CHAMBERS: Could it have been residing with God? [LB983]

SENATOR CARLSON: It could be residing wherever God wanted it to or allowed it to. [LB983]

SENATOR CHAMBERS: So it could have been residing with God? [LB983]

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SENATOR CARLSON: I don't know that. You're leading me into something I don't want to go and I'm not going to answer it directly. [LB983]

SENATOR CHAMBERS: Why? Why are you fearful to go where your mind leads you? [LB983]

SENATOR CARLSON: Because I'm on the spot here with you and I... [LB983]

SENATOR CHAMBERS: Actually, you're not. [LB983]

SENATOR CARLSON: ...respond as quickly as I can. [LB983]

SENATOR CHAMBERS: Okay. Could the spirit have been residing in the temple? [LB983]

SENATOR CARLSON: Yes, I think so. [LB983]

SENATOR CHAMBERS: Could it have been residing in somebody's house? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Could it have been residing in the air? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Does that evil spirit have the same ability that God would have to be everywhere at the same time, or would it be confined... [LB983]

PRESIDENT SHEEHY: Time, Senator. [LB983]

SENATOR CHAMBERS: ...to some... [LB983]

SENATOR CARLSON: Confined. [LB983]

SENATOR CHAMBERS: Thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Thank you, Senator Carlson. Senator Cornett, you're recognized. Senator Pirsch, you're recognized. [LB983]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor. I'd yield the balance of my time to Senator Chambers. [LB983]

PRESIDENT SHEEHY: Senator Chambers, you're yielded 5 minutes. [LB983]

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SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Pirsch. And I'd like to continue my discussion with "Parson" Carlson. [LB983]

PRESIDENT SHEEHY: Senator Carlson, would you yield? [LB983]

SENATOR CARLSON: Absolutely. [LB983]

SENATOR CHAMBERS: Senator Carlson, when...if you look at the story of the creation in Genesis, there was a statement that indicated that human beings would have dominion over the universe. Do you remember reading words to that effect? [LB983]

SENATOR CARLSON: Yes, I do. [LB983]

SENATOR CHAMBERS: And do you think in order to have that dominion, human beings would be given a brain with which they could think or, in other words, they would be endowed with intelligence? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Did the book say that they were made in the image of God? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Is God able to think? [LB983]

SENATOR CARLSON: Absolutely. [LB983]

SENATOR CHAMBERS: So human beings can think if they're made in the image of God? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Can you think? [LB983]

SENATOR CARLSON: I hope so. [LB983]

SENATOR CHAMBERS: Now if you think, meaning you're using your brain in the way that it was intended, can that be wrong? [LB983]

SENATOR CARLSON: Yes. [LB983]

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SENATOR CHAMBERS: It can be wrong for you to use the brain that you were given? [LB983]

SENATOR CARLSON: No, no. I thought you were asking me if my thinking can be wrong. [LB983]

SENATOR CHAMBERS: No. Is it wrong for you to use that brain? [LB983]

SENATOR CARLSON: Oh, absolutely not. [LB983]

SENATOR CHAMBERS: All right. [LB983]

SENATOR CARLSON: I'm commanded to do that. [LB983]

SENATOR CHAMBERS: Now if you follow your brain where it leads you, is that wrong? I'm not saying your lust, your bad moods, your emotions; where your brain leads you. Are there thoughts that would be wrong for you to think in your quest for what is true? [LB983]

SENATOR CARLSON: Yes. [LB983]

SENATOR CHAMBERS: Give me an example of one. [LB983]

SENATOR CARLSON: Well, I could think that you might stop on this bill pretty soon. [LB983]

SENATOR CHAMBERS: Well, it wouldn't be wrong for you to think that, is it? [LB983]

SENATOR CARLSON: No. [LB983]

SENATOR CHAMBERS: Okay. So I want you to give me an example of a thought you would have in your quest for truth that would be wrong for you to think. [LB983]

SENATOR CARLSON: If I thought evil and wished evil on someone, like you. [LB983]

SENATOR CHAMBERS: No, you're wishing. I'm talking about thoughts in your quest for truth. [LB983]

SENATOR CARLSON: Thoughts create wishes. So I might think that I would think evil of you. But I don't. [LB983]

SENATOR CHAMBERS: Senator Carlson, thank you very much. I'm not going to crack this nut. (Laugh) I mean, that's a matter of speaking. If he can pick me off, then I can

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crack a nut. I can try to. Members of the Legislature, here's what I'm getting at. Senator Kruse said he couldn't think of a foundation whose goal is to advance religion. I assure you if somebody becomes aware of something like this, they could do that. They could work together, they could find somebody and say look, you're going to give some money; don't give it to them, give it to me. And not only should you give it to me, but you will get up to \$10,000 or \$20,000 from the state if you do it. So that can be done. Money draws people who want money. Senator Carlson, when you put that dollar bill up and says, in God we trust, the God they trust is that dollar. That's the time they tell the truth. When you pull that coin out and it says, in God we trust, that coin is the god that they trust. There was a woman who had a daughter with a curable illness and she decided to treat that child with prayer. And the child died, and charges are being considered. Now somebody wrote a letter to the Pulse, it was one of the most clever things I saw. And the man wrote... [LB983]

PRESIDENT SHEEHY: One minute. [LB983]

SENATOR CHAMBERS: ...if she thought her daughter who had this disease should be treated with prayer and not given the benefit of a doctor, if she is charged and has to court, will she rely on prayer and not seek an attorney? People have a way when it comes to somebody else's interests being sacrificed. So those of you all who work with these foundations and you think they're great, the foundations have a narrow focus, they don't benefit society at large. You say underwrite them with tax breaks that will cause others to have to pay more taxes to carry out the duties and responsibilities of the state. And that's what this bill does and it is inappropriate if not downright immoral. Thank you, Mr. President. [LB983]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Mr. Clerk, you have a motion on your desk. [LB983]

ASSISTANT CLERK: Mr. President, priority motion: Senator Cornett would ask unanimous consent to bracket LB983 until April 17, 2008. [LB983]

PRESIDENT SHEEHY: You've heard the motion for unanimous consent. Any objection? So ordered. Next legislative bill under General File, Mr. Clerk. [LB983]

ASSISTANT CLERK: Mr. President, the next bill is LB1165, introduced by Senator Nelson. (Read title.) The bill was read for the first time on January 23 of this year, referred to the Appropriations Committee. That committee places the bill on General File with committee amendments. (AM2056, Legislative Journal page 788.) [LB1165]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Nelson, you're recognized to open on LB1165. [LB1165]

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SENATOR NELSON: Thank you, Mr. President, members of the body. I'm here this evening to introduce LB1165. First of all, I want to thank Senator Kruse for being a cosponsor on this bill, and for graciously allowing me to carry it. This bill was heard by the Appropriations Committee in February with no one testifying in opposition, and it is my priority bill. I'd like to give you a little bit of the legislative history. We're talking about the Cultural Preservation Endowment Fund, and that's the Nebraska Cultural Preservation Endowment Fund, which was created in 1998 by LB799, which was introduced by Senator LaVon Crosby at that time. LB799 passed 42 to 1. I think it's helpful to take a look at the statutes that have been in force since that time, and it's informative to read that the Legislature finds that the cultural climate of Nebraska is important to the state in many ways, including economically, politically, educationally, and socially. And then it went on to say, in order to ensure there is a stable cultural climate in the state for future generations, the Nebraska Arts Council and the Nebraska Humanities Council have joined efforts to establish a financial partnership between the public and private sector. And very briefly, what happened back in 1998 was that \$5 million was set up into the Nebraska Cultural Preservation Fund. And it is hereby established, a trust fund, to be known as the Nebraska Cultural Preservation Endowment Fund, and the fund shall consist of funds appropriated or transferred by the Legislature, and only the earnings of the fund may be used as provided in that section. And then the State Treasurer was required to transfer the \$5 million, at that time, and it's a little difficult to read fine print in this light, but I will just simply go on to say then that the money was appropriated and that the purpose of the fund and the way it was set up at that time was to place this \$5 million into the trust fund and park it there, so to speak. That's where the money would stay. It was not to be spent. It was to remain intact. However, the interest that was earned by that fund was to be available for the use of the Art Council and the Humanities Council, and it could not be distributed unless it was matched by private funds, and therefore the Nebraska Cultural Fund was set up as the private fund, and this is the vehicle through which then the private donations come, and they can come through endowment or cash or any type of contribution. But the requirement is that it be new money of some sort. And if the Nebraska Trust Fund, the state fund, were, for instance, in good years, to earn \$300,000, that money does not go into the General Fund so long as it is matched by the contributions from private donors. Then it is distributed to both of the councils and it goes out for use of the arts and for the humanities. There was some problem, a little bit of problem in establishing the fund originally, because there was a fear that nobody would donate. And although...let me ask. There was a member of the Legislature at this time that came up with the first donation. Can anybody guess who that might have been? Well, it was Senator Chambers. Senator Chambers, who has taken a vow of poverty, at that time said he would put up \$500 as a matching amount. It was my understanding that senators around the floor came in with checks and cash, and he raised \$1,700 or more, and that was the beginning of the state Cultural Endowment Fund, I mean the Nebraska Cultural Endowment Fund, as far as private donations coming in to be used as a match. We have a little different situation this time. We have a private donor from Omaha by

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the name of Dick Holland, who originally offered \$15 million, not all his own money, but he said that he would raise that along with his own contribution, and he would bring that forward if the state of Nebraska would match that. And so he came before the Appropriations Committee and I had already started in with LB1165 here which provided that \$15 million would be transferred out of the Cash Reserve Fund into the Cultural Endowment Fund. The Appropriations Committee considered it and decided that in light of our worsening economic times here that we could only go with \$5 million. And so there's a committee amendment providing for the \$5 million, and that's where we are at this time with the committee amendment. I should inform you that, for some reasons that I will describe a little later, I have an amendment to that committee amendment, but at this time, Mr. President, I think I will close on this opening so that the committee amendment can be presented. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You've heard the opening to LB1165. As previously noted, we have an Appropriations Committee amendment, AM2056. Senator Heidemann, you're recognized to open. [LB1165]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. Committee amendment 2056 would strike the existing section and become the bill. It amends Section 84-612, the section of law governing the Cash Reserve Fund. It provides that within five days after the effective date of the act or as soon after there as administratively possible the State Treasurer shall transfer \$5 million from the Cash Reserve Fund to the Nebraska Cultural Preservation Endowment Fund. Thank you. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Heidemann. You've heard the opening to the Appropriations Committee amendment, AM2056. Members requesting to speak are Senator Flood, followed by Senator Wallman and Senator Pirsch. Oh, correction. We do have an amendment to the committee amendment. Mr. Clerk. [LB1165]

ASSISTANT CLERK: Mr. President, Senator Nelson would amend the committee amendments with AM2637. (Legislative Journal pages 1270-1271.) [LB1165]

PRESIDENT SHEEHY: Senator Nelson, you're recognized to open on your amendment, AM2637. [LB1165]

SENATOR NELSON: Thank you, Mr. President and members of the body. This amendment to the committee amendment has its origin in the fact that some members on the floor that I discussed it with had a little bit of problem of transferring the \$5 million at this time, and I can certainly understand that. Let me tell you how wonderful it would be if we were in better economic times right now, as far as the forecast, and that we could have accepted the \$15 million and matched that, and certainly the \$5 million is just as good. But this is where we are with the committee amendment. The thing is that

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taking \$5 million out of the Cash Reserve Fund this particular year may not be the thing to do, and therefore what my amendment does is stretch that over a period of three years. We still have the \$5 million but the way the amendment works and I filed it earlier this afternoon, and I think you will probably find it on your computer if you want to take a look at it, but it says that for this year we will transfer \$1 million, only \$1 million out of the Cash Reserve. In the next year...then there is intent language in this amendment that says in the following two years we will appropriate \$2 million out of the General Fund. Now, of course, those appropriations at the rate of \$2 million would go through appropriations, go through the normal process. And if for some dire reason we found that we could not honor that commitment, why, I suppose it would be changed. I certainly would hope that we would not; that in good faith, by spreading this over three years, we could meet and match the commitment that Dick Holland has made, by coming forward with the \$5 million. The intent is there, and this is the way that the amendment is worded, and I'm not going to read through it. I will just simply tell you that it provides for \$1 million now at this time of the Cash Reserve, and that is all, and we can talk about that a little later. I do want to point out to you, all of you that are present here in the Chamber, I have distributed materials to you. There's a cover letter. There is a little brochure that's put together in four pages. And I would like to point those things out to you if I may. You will find, for each of your particular districts, a listing of the money that has been distributed from 2005 to the present time by the Nebraska Humanities Council, and also for your district, from the Nebraska Arts Council, grants. I have them from my district here in 6. I think in the case of Omaha, it's only the Arts Council that we have it broken down by districts, whereas the Nebraska Humanities Council just presents it for the entire area. But those senators that are here from Lincoln, you can take a look and you will see, from 2005 to present, that the Nebraska Humanities Council distributed \$221,000, and that the Arts Council, over a seven-year period, distributed \$1.4 million, and affected, in one way or another, close to 5 million individuals in that seven-year period. I'll skip over Omaha for right now. From Norfolk, District 19, Speaker Flood's...the Humanities Council, in two years, gave \$9,400, and the Arts Council, over a period of seven years, \$277, and they brought arts and education and instruction and understanding of the arts to over 100,000 individuals. Bellevue benefitted from the Humanities Council to the tune of \$1,700, and the Arts Council, \$49,000, and 64,000 individuals were brought in at that time. I'm going to go to the western part of the state now and I should say at this time that the two councils, by agreement, have agreed that 40 percent of the money that they have to distribute and use will go to the western part of the state. I think that it's something like 27 percent here in Lincoln, and the balance is in the Omaha area. If you look at the little brochure there, you will see a pie chart which tells you exactly what I've said. I think it's on page 3, 39 percent, 35 percent, and 27 percent. There's also a map of Nebraska that show all of the places across the state of Nebraska, all of the schools, all of the communities where arts have been presented, humanities programs, chautauqua that affected the community. That will give you a pretty good idea of what went around the state. I won't continue any farther. I think that I would just urge each of you, if you're not present in

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the Chamber, to return when you can and take a look at that so that you can have a better idea of what we're doing through this. A little later I think I can discuss, if you have questions, about how this actually works. We have a flow chart there that shows...and you may have some questions about that. But at this time I would encourage you to adopt AM2637 to the committee amendment. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You have heard the opening of the amendment to committee amendment AM2637 to AM2056. Members requesting to speak are Senator Flood, followed by Senator Wallman, Senator Pirsch, Senator Wightman, Senator Harms, and Senator Kruse. Senator Flood, you're recognized. [LB1165]

SPEAKER FLOOD: Thank you, Mr. President and members. When Senator Nelson introduced his bill the first time, it had a \$5 million A bill out of the Cash Reserve in the first year to match Mr. Holland's contribution to the private endowment as required by the statute. Senator Nelson amended...is attempting to amend with AM2637, that would take \$1 million out of the Cash Reserve this year and then \$2 million in the next fiscal year after the upcoming one, and \$2 million after that, for a total of \$5 million out of General Funds. Stating legislative intent, I think that shows good faith and I think that is a process that I can support. I appreciate his consideration in changing that. And at the end of the day, I think this money does good things. In my own district, I've seen Latino children from my hometown in my county, have had the great benefit of cultural events, exposing all races to the culture of Latino children in my community. I've seen good things happen statewide with the chautauqua and the arts, and I think that Senator Nelson's approach is the right direction. I'm going to support AM2637, provided it's amended. I'm going to support the Appropriations Committee amendment which becomes AM2667 (sic--AM2637) and LB1165. I want to thank him for bringing this bill. I want to thank him for his courtesy in being flexible, and I look forward to its advancement. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Wallman, you're recognized. [LB1165]

SENATOR WALLMAN: I too want to thank Senator Nelson, and this is a nice brochure and literature he got. I looked at here's Beatrice, I go to some of these things like Homestead National Monument. That's a neat place, and some of these others. They did things for the PTOs and the folk singers. So I'll be very brief here and I want to thank him for this, and I urge support of this bill. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Pirsch, you're recognized. [LB1165]

SENATOR PIRSCH: Thank you, Mr. Lieutenant Governor, members of the body. I

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wonder if Senator Nelson might yield to a question or two? [LB1165]

PRESIDENT SHEEHY: Senator Nelson, would you yield? [LB1165]

SENATOR NELSON: I'd be very happy to, Senator. [LB1165]

SENATOR PIRSCH: Very good. Thank you very much. I did have a question with respect to this...the arrangement here now. Am I to understand that the monies used to fund these...or the grants to these arts and humanity events, would come to the interest raised on these monies being distributed? Is that...? I'm sorry, these monies that are being matched by this contributor, is that correct, as well as the states' funds? [LB1165]

SENATOR NELSON: That's correct. Let's take the state fund. I'm going to talk in terms of the state and the private fund. Currently we have \$5.5 million in the state fund, the Cultural Endowment Fund, which we've had for a number of years. Senator Pirsch, that stays right there. That is never spent. That is never consumed. That's the principle that we keep. Depending on the interest rates, we get interest from that, and then we look to the private fund, and it's set up that way so that private donors can come to the Nebraska Cultural Fund, the private fund, and make their donations there. They don't have quite as much in their fund as we do, but they're also earning interest there, and that interest and the fresh money and everything that they can come up with, they have to tell our State Treasurer that they have that money available to match the interest that we have in our fund. And then we can distribute the interest out of the state fund. They combine it with theirs, and then it goes to the two humanities...the Humanities Council, which I believe is located here in Lincoln, and the Arts Council, and they distribute it then according to the directions of their respective boards. [LB1165]

SENATOR PIRSCH: Okay. And it's a dollar-for-dollar match then? [LB1165]

SENATOR NELSON: Absolutely. It has to be a dollar-for-dollar match. And if there's \$300,000 earned by the state fund and they can only come up with \$200,000, why, then that's all distributed. The other \$100,000 stays in. And they have made a practice of it over the years. We have the 5.5 because they wanted to be sure that there was a little extra in the state fund in case we did have an economic downturn and we weren't getting the interest, or we wanted to keep the fund at a pretty stable level. [LB1165]

SENATOR PIRSCH: Very good. And the principle that we put in this account is not touched then, these millions of dollars. [LB1165]

SENATOR NELSON: That's correct. [LB1165]

SENATOR PIRSCH: So if we change our mind in the future and decide that we'd like to use it in some other fashion, the money that we put in the account, we can take that

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back (inaudible) as a state if we were to, next legislative session or future legislative sessions? [LB1165]

SENATOR NELSON: It's my understanding from the Fiscal Office that we could do that but it would require changing the statute. [LB1165]

SENATOR PIRSCH: Okay. [LB1165]

SENATOR NELSON: Probably we would not want to do that with what we have now. It might be possible in the next couple of years if we're really forced into it, but again I would certainly hope that we would exhaust every other possibility before we would do something like that. [LB1165]

SENATOR PIRSCH: Sure, but at least we would have the discretion to do that... [LB1165]

SENATOR NELSON: Yes. [LB1165]

SENATOR PIRSCH: ...if that's the wisdom of future legislature,... [LB1165]

SENATOR NELSON: Yes. [LB1165]

SENATOR PIRSCH: ...to take that money back. Okay. So we're just talking about using the interest on that money (inaudible). [LB1165]

SENATOR NELSON: Using that interest. That's what is lost, if you will, to the state--the amount of interest. [LB1165]

SENATOR PIRSCH: Okay. So it's not...these sums being put in separate accounts will not be spent. We're just talking that principle will be preserved in (inaudible). [LB1165]

SENATOR NELSON: Absolutely. [LB1165]

SENATOR PIRSCH: Okay. I just wanted to clarify that... [LB1165]

SENATOR NELSON: You bet. [LB1165]

SENATOR PIRSCH: ...and I do appreciate it. I'd give the balance of my time to Senator Nelson if he wanted to add some points. [LB1165]

SENATOR NELSON: All right. [LB1165]

SENATOR NELSON: Let me just use this opportunity... [LB1165]

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PRESIDENT SHEEHY: One minute. [LB1165]

SENATOR NELSON: Thank you, Mr. President. I think on page 2 there, there are some key points. This is a one-time funding request. It will impact communities statewide. The passage of this bill will enhance the quality of life in Nebraska for Nebraskans, making our state a more attractive place to live and to relocate a business to. It will enrich and it has enriched Nebraska communities and should enhance our cultural tourism. And it will contribute to the economic development of our state. We have, in the past ten years, raised over \$3.4 million that has gone to both of the councils, and the private fund has raised not quite as much as that because they don't have as much in there. But I think the figure is over \$6 million that we have been able to distribute around the state. [LB1165]

PRESIDENT SHEEHY: Time, Senator. [LB1165]

SENATOR NELSON: Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Thank you, Senator Nelson. Senator Wightman, you're recognized. [LB1165]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I too rise in support of LB1165, as well as the amendments. I want to thank Senator Nelson for bringing this to us, and also thank him for working with us in getting the amount down to probably a more acceptable level. I wanted to thank Senator Flood for bringing this compromise to us because I think it does make the bill more palatable as far...considering our budget problems this year. And above all, I'd like to thank Mr. Holland for making such a...being willing to make such a generous gift, but moreover, in working with the Appropriations Committee, with Senator Nelson, with Senator Flood, in...because as was indicated, this started out as a \$15 million challenge grant. It was later reduced to \$5 million, and then worked with us beyond that to get it down to \$1 million match this year. So I'm really appreciative of these efforts that were made to get it down to where it can be something we can probably look at favorably. I certainly am in favor. I think that to outstate Nebraskans this is a major way of preserving the history, preserving parks, preserving many of the things that often we don't think of when we think of outstate Nebraska. I know Lexington has been the benefactor of some of these funds in the past, as has almost every other community in my district. I have a list here that indicates we've seen \$66,000 out of this since the inception. I think maybe the preservation of the humanities is going to be even more important, and I remember our discussion on the statewide testing bill, and I thought it was clearly indicated that the test probably goes to science, math, and reading as the major items. As a result of this, I think it is quite possible that we will see some reduction in our teaching of history, government, and things that we normally think of as the humanities. And I think if that

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happens, and I think it's likely to happen, that we see a reduced emphasis on these subject matters, that it will become more important that we have these funds available and that the people in our communities in outstate Nebraska be reminded of the history of the country and all of the things that the teaching in the humanities can bring to it. So I fully support the bill and the amendments. I urge your support, as well. Thank you. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Speaker Flood, you're recognized for an announcement. [LB1165]

SPEAKER FLOOD: Thank you, members. We've made good progress today. It's my intention to adjourn at the...following the resolution of LB1165. So after this bill it is my hope that we can adjourn for the evening and reconvene tomorrow at 9:00 a.m., but after this bill. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Speaker Flood. Senator Harms, you're recognized. [LB1165]

SENATOR HARMS: Thank you, Mr. President and colleagues. I find myself tonight in a little unusual position, because in the Appropriations Committee I voted against this bill. And after I voted against the bill I realized that I'd made a mistake. I began to focus in my mind what this program does, and the kind of people that it helps. So I visited with our Chairman, Senator Heidemann, and said I'm going to...I want you to understand, I'm going to support this bill when it comes to the floor; I don't want it to be a surprise to you but I think it is important enough that we begin to focus on this. And I want to talk a little bit about what this program does, and I've had the opportunity to experience this. For a number of years I was on the board for the Humanities Council, and I had a chance to experience, to see just what it does for children. And where I live we don't have some of the finer cultural activities. This program reaches out to children that come from families that are poor, that are disadvantaged, that don't have books in their home, don't have art supplies in their home, don't have access to music and theater--all the kinds of things that makes a person well-rounded in this society. This program does that. This program is critical to some children, because not everyone is going to be an athlete, not everyone is going to have the ability to be musically oriented, but they may find an opportunity to express themselves through art or pottery or sculpture. And this is what this program does for children, this is what this program does for a lot of people. They have an arts-in-residency program where they send some of the best people we have in the state that will go into a community that will help them develop their programs, help them reach out for programs with children. They have a mentoring program for artists in color, they have programs that are a multicultural assistance program that is absolutely phenomenal that we ought to be supporting. I think this program gives us that opportunity. The fact that we have someone who's willing to match this, million dollar after a million dollar, is worth it. I think it's a great contribution. It gives us an opportunity

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to get to create a program that's even better. And so I would urge you to support these amendments and LB1165. Thank you, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Kruse, you're recognized. [LB1165]

SENATOR KRUSE: Thank you, Mr. President and colleagues. We have said more than enough, and so I will be very brief, but I do want to state my strong support for this and my great appreciation for the donor in coming at this. This donor has done a lot for his local community. But what really impresses me in this is he looks at the state and goes seeking for a way that he can help us all the way across the state. Number two, not only does this double with his match, but it's doubled again when it's given to the local community. So we really get a multiplying effect on this gift. Number three, it's going to help us in future budgets. If we are really flat, those who are concerned about the Nebraska humanities are not going to be destitute. That's a big item for us as we're looking at challenges of budgets in the next couple of years. And finally, I want to thank Mr. Holland for his willingness to give us three years to match. I'm not sure everybody caught this. He's put his money up-front, and will give us the time to figure out our finances to do it right. Thank you. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Kruse. Members, for your information, the agenda for tomorrow is now available on the Internet. Additional members wishing to speak on AM2637, Senator Howard, followed by Senator Pahls and Senator Stuthman. Senator Howard, you're recognized. [LB1165]

SENATOR HOWARD: Thank you, Mr. President and members of the body, and thank you, Senator Nelson, for bringing us this bill and the information for this bill in such an organized fashion. It was a pleasure to look through this and see what's happening in my district. I've had occasion to talk to Dick Holland and to really appreciate the work that he does. He's a person who loves his state of Nebraska so much that he puts his money where his mouth is. And just a few of the things that really meant a lot to me were the funding that he's put toward the restoration of Joslyn Castle; the money toward Yates Elementary School, which most recently has been used as an alternative school, and that's not always a population that people think of when they want to enhance a program; and then there's a senior living through art program that receives some funding too. All of these things are things that really make life better for people that are struggling or maybe are facing adversity, and I certainly thank him. And John, thank you. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Howard. Senator Pahls, you're recognized. [LB1165]

SENATOR PAHLS: Lieutenant Governor, members of the body, last year approximately

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at this time Senator Johnson and myself, we were talking about something very similar to this but it dealt with autism. That is a time when Gail Werner-Robertson stood up to the plate, donated \$5 million if we would find \$5 million to help in that area. We did in the Health Care Fund. This is another example, when we have somebody from the business or the private world stepping up to the plate and helping the state of Nebraska and the young citizens. And thank you for that. Thank you. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Pahls. Senator Stuthman, you're recognized. Senator Stuthman waives. Are there additional members wishing to speak to AM2637? Seeing none, Senator Nelson, you're recognized to close. Senator Nelson to close. [LB1165]

SENATOR NELSON: Thank you, Mr. President. Senator Pirsch apparently had something more to say, but we'll go ahead and close. I haven't talked about...fellow members, I haven't talked about the public policy aspect of this, and I think we have to consider that. LB1165 and the...my amendment is formulated to the...amended to the committee amendment, is good public policy. It contributes, supports, and enhances a current law, which we now call the Nebraska Cultural Preservation Endowment, which was created by the Legislature in 1998. More than \$3.4 million in income from this state fund has gone to support arts and the humanities programs throughout Nebraska without any impact on our states' budget. The private sector has raised nearly \$4 million in a private endowment to match the state funds. Through the Nebraska Cultural Endowment, the state has encouraged substantial, private-sector involvement in the essential public functions of educational and economic development. The fact that this is good public policy is borne out by the donation of Dick Holland from Omaha, and I along with others that have spoken previous to me, certainly want to thank him for coming forward with this. The contributors, I just want to point out, have no control over the income from the state fund other than to know that it will advance the arts and humanities in Nebraska. How often do we hear from the private sector that they want to partner with us to educate our children and enhance our economic development? Not often enough. How many laws in Nebraska, or anywhere else for that matter, reduce the ultimate burden on the state budget while furthering essential public functions? Not many. By participating as our partners, those in the private sector are telling us that we are doing the right thing. And so I will end with this: Those of us that came into the Legislature two years ago, we had a meeting out at the Platte River Park, and I think Senator David Landis spoke to us at that time, and he was very interested in the arts. And I remember so well, his telling about the young man who told him that the only reason that he went ahead and graduated from high school was because of a school play that he saw and the opportunity that he had to be in it. And I think we can say the same thing. I think that with all the programs that are going into Nebraska through these two funds and these two councils, I think we're going to see a lot more kids staying in school and seeing it through their senior year and benefiting us and the economy of the state of Nebraska. Thank you, Mr. President. I encourage the body to adopt my

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amendment, AM2637, to AM2056, and the underlying bill as well. Thank you again, Mr. President. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You've heard the closing on the amendment to committee amendments AM2637. The question before the body is on the adoption of AM2637 to AM2056. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1165]

ASSISTANT CLERK: 39 ayes, 0 nays, on the adoption of Senator Nelson's amendment to the committee amendments. [LB1165]

PRESIDENT SHEEHY: AM2637 is adopted. We will return to floor discussion on Appropriations Committee amendment AM2056. I see no lights on. Senator Heidemann, you're recognized to close. Senator Heidemann waives closing. The question before the body is on the adoption of the Appropriations Committee amendment AM2056 to LB1165. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1165]

ASSISTANT CLERK: 37 ayes, 0 nays, on the adoption of committee amendments. [LB1165]

PRESIDENT SHEEHY: Committee amendment AM2056 is adopted. We will return to discussion on the advancement of LB1165. Seeing no lights on, Senator Nelson, you are recognized to close. [LB1165]

SENATOR NELSON: Mr. President, I will waive closing, and thank you...thank this body for its attention. [LB1165]

PRESIDENT SHEEHY: Thank you, Senator Nelson. You've heard the closing. The question before the body is on the advancement of LB1165. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1165]

ASSISTANT CLERK: 34 ayes, 0 nays, on the motion to advance the bill. [LB1165]

PRESIDENT SHEEHY: LB1165 advances. Mr. Clerk, items for the record. [LB1165]

ASSISTANT CLERK: Mr. President, your Committee on Education reports LB1152 to General File. Amendments to be printed: Senator Raikes to LB983, Senator McGill to LB813, Senator Schimek to LB956. (Legislative Journal pages 1271-1272.) [LB1152 LB983 LB813 LB956]

And, Mr. President, I have a priority motion. Senator Flood would move to adjourn until Wednesday, April 2, 2008, at 9:00 a.m.

Transcript Prepared By the Clerk of the Legislature  
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Floor Debate  
April 01, 2008

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PRESIDENT SHEEHY: You've heard the motion to adjourn until Wednesday, April 2, 2008, at 9:00 a.m. All those in favor say aye. Opposed, nay. We stand adjourned.